

EXHIBIT B

1 UNITED STATES BANKRUPTCY COURT
2 DISTRICT OF DELAWARE

3
4 In re: :
: Chapter 11
5 ENERGY FUTURE HOLDINGS :
CORP., et al., : Case No. 14-10979 (CSS)
6 :
Debtors. : (Jointly Administered)

7 _____:

8
9
10 United States Bankruptcy Court
11 824 North Market Street
12 Wilmington, Delaware
13 December 16, 2015
14 9:43 AM

15
16
17
18
19
20
21 B E F O R E :
22 HON CHRISTOPHER S. SONTCHI
23 U.S. BANKRUPTCY JUDGE

24
25 ECRO OPERATOR: LESLIE MURIN

1 HEARING re Status Update: Executory Contract and Cure
2 Dispute Issues

3
4 HEARING re Stewart Claims Objections

5
6 HEARING re Debtors' Fourteenth Omnibus (Substantive)
7 Objection to Certain No Liability Claims.

8
9 HEARING re Debtors' Thirty-Third Omnibus (Substantive)
10 Objection to Substantive Duplicate and No Liability Claims

11
12 HEARING re: Motion for Application of Federal Rule of
13 Bankruptcy Procedure 7023 and to Certify A Class Pursuant to
14 Federal Rule of Civil Procedure 23.

15

16

17

18

19

20

21

22

23

24

25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 MORRISON & FOERSTER

4 Attorney for the TCEH Committee

5

6 BY: TODD M. GOREN

7

8 MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

9 Attorney for TCEH Debtors

10

11 BY: DAVID P. PRIMACK

12

13 PACHULSKI STANG ZIEHL & JONES

14 Attorney for 2nd Lien Indenture Trustee

15

16 BY: JOSEPH M. MULVIHILL

17

18 NIXON PEABODY

19 Attorney for the American Stock Transfer & Trust
20 Company, as EFH Indenture Trustee

21

22 BY: RICHARD C. PEDONE

23

24

25

1 KIRKLAND & ELLIS

2 Attorney for the Debtors

3
4 BY: EMILY E. GEIER

5 BRENTON ROGERS

6 APARNA YENAMANDRA

7 JONATHAN GENTRY

8 CHAD J. HUSNICK

9
10 PAUL, WEISS, RIFKIND, WHARTON & GARRISON

11 Attorney for Ad Hoc Committee of TCEH First Lien
12 Creditors

13
14 BY: JACOB A. ADLERSTEIN

15
16 YOUNG CONAWAY STARGATT & TAYLOR, LLP

17 Attorney for Ad Hoc Committee of TCEH First Lien
18 Creditors

19
20 BY: PAULINE K. MORGAN

21
22 HOGAN MCDANIEL

23 Attorney for Punitive Class Claimants

24
25 BY: DANIEL K. HOGAN

1 SULLIVAN & CROMWELL LLP

2 Attorney E-side Committee

3

4 BY: ALEXA J. KRANZLEY

5

6 MONTGOMERY MCCRACKER WALKER & RHOADS, LLP

7 Attorney E-side Committee

8

9 BY: MARK A. FINK

10

11 POTTER ANDERSON CORROON LLP

12 Attorney for Deutsche Bank New York

13

14 BY: R. STEPHEN MCNEILL

15

16 SHEARMAN & STERLING LLP

17 Attorney for Deutsche Bank

18

19 BY: (Indiscernible)

20

21 MORRIS JAMES LLP

22 Attorney for Law Debenture of New York,

23 Indenture Trustee

24

25 BY: STEPHEN MILLER

1 RICHARDS LAYTON & FINGER

2 Attorney for the Debtors

3

4 BY: DANIEL J. DEFRANCESCHI

5

6 DRINKER BIDDLE & REATH LLP

7 Attorney for Citibank, NA TCEH DIP Agent

8

9 BY: HOWARD A. COHEN

10

11 POLSINELLI

12 Attorney for TCEH Creditor's Committee

13

14 BY: JUSTIN K. EDELSON

15

16 VENABLE

17 Attorney for PIMCO

18

19 BY: DANIEL O'BRIEN

20

21 BIELLI & KLAUDER, LLC

22 Attorney for EFH Corp.

23

24 BY: DAVID KLAUDER

25

1 WHITE & CASE LLP

2 Attorney for Investor Consortium

3

4 BY: CHRIS SHORE

5

6 GELLERT SCALIE BUSENKELL & BROWN

7 Attorney for Mr. Stewart

8

9 BY: GARY F. SEITZ (TELEPHONICALLY)

10

11 MONTEMAYOR & MONTEMAYOR

12 Attorney for Mr. Stewart

13

14 BY: CHARLES MONTEMAYOR

15

16 ALSO PRESENT TELEPHONICALLY:

17 SCOTT L. ALBERINO

18 ARLENE R. ALVES

19 ASHLEY F. BARTRAM

20 PEG A. BRICKLEY

21 MARK A. CODY

22 KENT COLLIER

23 MICHAEL L. DAVITT

24 STACY DORÉ

25 CATHERINE EISENHUT

1 BENJAMIN D. FEDER
2 BARRY FELDER
3 SETH GOLDMAN
4 CHRISTOPHER HAHM
5 MARK F. HEBBELN
6 NATASHA HWANGPO
7 HAROLD KAPLAN
8 CHARLES KOSTER
9 STUART KOVENSKY
10 DANIEL A. LOWENTHAL
11 ROBERT K. MALONE
12 JONATHAN D. MARSHALL
13 BRIAN P. MORGAN
14 HAL F. MORRIS
15 MEREDITH PFISTER
16 ABID QURESHI
17 RACHAEL RINGER
18 MARC B. ROITMAN
19 ERIK SCHNEIDER
20 KENNETH STEWART
21 AMER TIWANA
22 MICHAEL TURKEL
23 MATTHEW UNDERWOOD
24 KEVIN M. VAN DAM
25 APARNA YENAMANDRA

1 FOTEINI TELONI

2

3

4

5

6

P R O C E E D I N G S

7

CLERK: All rise.

8

9

THE COURT: Please be seated. Excuse me. Good morning.

10

11

12

13

14

15

16

17

18

19

20

THE COURT: Yes.

21

22

23

24

25

MR. HUSNICK: Throughout this case, the various boards have worked to operate the business and maximize value while also making efforts to preserve optionality for the future owners. With the entry of the orders approving the PSA, that is the Plan Support Agreement, the settlement

1 and the plan, we now know that the TCEH first liens will be
2 the future owners of TCEH regardless of whether the current
3 plan goes effective or we need to resort to an alternative
4 plan.

5 As a result, the TCEH first liens have requested
6 increased access to management at the operating levels of
7 TCEH during the gap period between confirmation and the
8 effective date so that the TCEH first liens can hit the
9 ground running once TCEH emerges from bankruptcy.

10 In response to that request, the TCEH board has
11 agreed to give the TCEH first liens increased access to
12 management at the operating levels in the business and has
13 committed and looked forward to working with the TCEH first
14 liens to positively position the business and its cost
15 structure to adapt to changing market conditions and its
16 emergence from restructuring.

17 The Debtors stipulate that nothing in the proposed
18 order that Your Honor entered yesterday will prevent the new
19 board of reorganized TCEH after emergence from bankruptcy
20 from enacting whatever compensation plans they deem
21 appropriate to meet their new business plans subject to
22 limitations in the plan, the settlement and confirmation
23 orders and the plan support agreement regarding current
24 compensation plans and employment agreements. That
25 concludes the statement.

1 THE COURT: Okay.

2 MR. HUSNICK: Your Honor --

3 THE COURT: Hang on, Mr. Husnick.

4 MR. HUSNICK: Pardon me?

5 THE COURT: Hang on. Someone wants to be heard.

6 MR. HUSNICK: Sure.

7 MR. ADLERSTEIN: Thank you, Your Honor. Jacob
8 Adlerstein, Paul Weiss Rifkind Wharton & Garrison on behalf
9 of the ad hoc committee of TCEH first lien creditors. Just
10 following up on Mr. Husnick's remarks, I want to thank the
11 Debtors, their professionals and their management for
12 agreeing to work with our clients to finally reposition the
13 TCEH business during this trying time.

14 We very much look forward to working together with
15 the Debtors on this critical endeavor. As you've heard many
16 times before, the TCEH Debtors are facing significant
17 headwinds which have had a substantial impact on their
18 financial performance. Just by way of example, the TCEH
19 first lien debt has traded down by nearly \$10 billion since
20 the petition date and natural gas prices are currently under
21 \$3 dollars.

22 As the future owners of reorganized TCEH, the ad
23 hoc committee of TCEH first lien creditors is very focused
24 on acting swiftly and aggressively to meet these challenges.
25 We look forward to working correctively with the company to

1 identify and implement changes prior to emergence that will
2 maximize the company's value and we appreciate very much the
3 company's commitment to work with us in this regard. Thank
4 you.

5 THE COURT: Okay. Thank you.

6 MR. HUSNICK: Thank you, Your Honor. So this
7 takes us to the agenda. Just as a quick preview, Your
8 Honor, if it's okay with you, we had proposed to proceed in
9 the following way. First we would hear a short up status
10 update for Your Honor on the executory contract and cure
11 dispute issues that we identified on the agenda. The bulk
12 of it's been adjourned but we wanted to give Your Honor an
13 update of what we're doing to try to narrow those objections
14 because there's a lot on the docket related to that -- those
15 issues.

16 Then we'll turn to the Stewart claims objections
17 and then last we will have the motion of the unmanifested
18 asbestos plaintiffs for a -- to appoint a class
19 representative and authorize the filing of a class proof of
20 claim. If that order works with Your Honor, that's what we
21 would proceed with.

22 THE COURT: That's fine.

23 MR. HUSNICK: Okay. Thank you, Your Honor. And I
24 turn the podium over to Ms. Emily Geier from Kirkland.

25 THE COURT: Thank you. Good morning, Ms. Geier.

1 MS. GEIER: Good morning, Your Honor. Emily Geier
2 from Kirkland & Ellis appearing on behalf of the Debtors.
3 I'm here this morning like probably Chad Husnick said to
4 give a brief update on the contract assumption and rejection
5 process and where it stands today.

6 Cumulatively through the process, the Debtors have
7 assumed nearly 7000 contracts and rejected approximately
8 100. The Debtors have paid or plan to pay \$55 million in
9 care costs but the overall effort has generated about \$400
10 million in savings to the Debtors. Specifically through the
11 plan supplement, the Debtors assumed approximately 2800
12 contracts and rejected approximately 75. The Debtors will
13 pay the \$44 million in cure costs related to those plan
14 contracts on the plan effective date.

15 The Debtors received 11 formal objections or
16 reservations of rights and approximately 45 informal
17 inquiries from creditors. As reflected in Exhibit Z to the
18 amended agenda, the Debtors have resolved the vast majority
19 of those objections. As of today, only four contract
20 objections remain outstanding and as Your Honor is aware,
21 the confirmation order provided that any outstanding
22 contract objections would be heard at today's hearing.

23 The Debtors and the four objecting parties have
24 agreed to further adjourn those objections to the January
25 Omnibus hearing. We don't believe that there's any

1 substantive disagreement on the issues. It's just
2 additional time to reconcile our records and the party's
3 records and confirm the cure amounts. The Debtors expect to
4 have those objections resolved before the January 14th
5 hearing.

6 Additionally, two contracts remain on --

7 THE COURT: I'm sorry. I'm just interrupting you
8 briefly so that it's being continued to January 14th?

9 MS. GEIER: Exactly, the January Fourteenth
10 Omnibus hearing.

11 THE COURT: Just give me a moment.

12 MS. GEIER: And I can give you the names of those
13 objections.

14 THE COURT: That's okay. I just want to double
15 check that everything's correct with regard to our records
16 on that being a hearing date. Okay. That's fine. That's
17 listed as starting at 9:00, by the way. We won't start at
18 9:00. We'll start that hearing at 10:00.

19 MS. GEIER: That sounds like good news.

20 THE COURT: Yeah. I don't know why it's on at
21 9:00.

22 MS. GEIER: Okay. And additionally two contracts
23 remain on the Debtor's amended conditional assumption list.
24 We removed the majority of those contracts. They've either
25 been assumed or one was moved to the reject list. The

1 parties and the Debtors are finalizing the terms of those
2 two amended agreements.

3 We've reached an agreement in principle on each of
4 them and hope to enter into those amended agreements before
5 the January 14th hearing.

6 So updates for those two conditional assumptions
7 and the resolution of the remaining cure objections will be
8 reflected in an amended plan supplement that we'll file
9 before that hearing or other filings as necessary with the
10 Court. Your Honor, I'm happy to answer any questions you
11 may have, otherwise...

12 THE COURT: No, I have no questions, thank you.

13 MS. GEIER: Great. Otherwise I will yield the
14 podium to my colleague, Aparna Yenamandra, to address the
15 next item on the agenda.

16 THE COURT: Okay.

17 MS. GEIER: Thank you.

18 MS. YENAMANDRA: Good morning, Your Honor. Aparna
19 Yenamandra from Kirkland & Ellis on behalf of the Debtors.
20 Your Honor, the next item on today's agenda is the Debtor's
21 Fourteenth Omnibus objection to claims as it relates to
22 proof of claim number 5739 for an unliquidated amount and
23 10003 for \$1.8 billion and the Debtor's Thirty-Third Omnibus
24 objection to claims as it relates to proof of claim number
25 10982 for an unliquidated amount.

1 Your Honor, we understand that on the original
2 agenda that was filed for today's hearing, we listed the
3 first two proofs of claim as they relate to the Fourteenth
4 Omnibus objection but inadvertently failed to list the third
5 proof of claim as it relates to the Thirty-Third Omnibus
6 objection. This was remedied on the amended agenda and just
7 so Your Honor's aware, Kirkland sent an email to the
8 claimant and her representatives and agents, which I'll
9 provide more color on in a moment, on Monday morning before
10 the first agenda was filed indicating that the claims for
11 the Fourteenth and Thirty-Third Omnibus objection would be
12 up today pending further word from them, which we did not
13 receive. And additionally, the one claim on the Thirty-
14 Third objection relates to the same basis for liability as
15 the first two objections. So we'd like to go forward on all
16 three.

17 THE COURT: That's fine.

18 MS. YENAMANDRA: All three of these proofs of
19 claim were filed by Ms. Kukja Stewart who received notice of
20 Your Honor's order establishing a customer claims bar date
21 in her capacity as a former customer at TSU Energy. Your
22 Honor may have seen that Ms. Stewart's counsel of record Mr.
23 Seitz withdrew his notice of appearance recently, which I
24 can provide more color on.

25 This means that Ms. Stewart is pro se. We do not

1 believe that she is here today. We understand that her son,
2 Mr. Kenneth Stewart and his purported agent, Mr. Marco
3 Montemayor, are here today. Your Honor, neither Mr. Stewart
4 or Mr. Marco Montemayor are attorneys. Mr. Stewart has
5 never filed a proof of claim and we're a bit unclear on the
6 capacity in which they speak today but we understand they're
7 here and we're happy to give them their time subject to Your
8 Honor's allowance.

9 THE COURT: Mm hmm.

10 MS. YENAMANDRA: So what I would propose, Your
11 Honor, just to bring some order to this presentation, is for
12 the Debtors to first kind of provide a brief overview of the
13 claims, including the items that Mr. Stewart and Mr.
14 Montemayor filed on the docket and then, second, the process
15 the Debtors undertook before and after filing the claims
16 objection as information floated to, for lack of a better
17 term, quadruple check that. They had no relationship to the
18 allegations or liability based on the proofs of claim.

19 At that point, the Debtors would yield the podium
20 to Mr. Stewart and/or Mr. Montemayor if they so desire and
21 we'll (indiscernible) with rebuttal if needed.

22 THE COURT: All right.

23 MS. YENAMANDRA: Your Honor, the Debtors filed the
24 Fourteenth Omnibus claims objection on April 2nd, 2015,
25 years are important in this case, at Docket number 4050 and

1 the Thirty-Third Omnibus claims objection on October 16th,
2 2015 at Docket number 6499.

3 Each claims objection was supported by a
4 declaration from Mr. Steven Kotarba. Mr. Kotarba is in the
5 Courtroom today and serves as a managing director at Alvarez
6 & Marsal, the Debtor's restructuring advisor. His
7 declarations were docketed at Docket numbers 4051 and 6501
8 respectively. I have copies of Mr. Kotarba's declaration if
9 Your Honor would like to see them.

10 THE COURT: No, I have them

11 MS. YENAMANDRA: Additionally, the Debtors
12 conducted additional searches of their books and records
13 based on information received from Ms. Stewart, Mr. Stewart,
14 Mr. Marco Montemayor and Mr. Seitz prior to his withdrawal
15 as counsel. If called to testify about these additional
16 searches, Mr. Kotarba, who is a senior member of the
17 Debtor's claims evaluation team would testify that, first,
18 Ms. Stewart's discovery request included specific references
19 to persons, entities and over 50 property records, almost
20 all of which covered the same parcel of land, which is 1800
21 Hunter Ferrell Road.

22 As a baseline matter, the only identifiable land
23 parcel in Ms. Stewart's discovery request, again, 1800
24 Hunter Ferrell Road, is in Irving, Texas. Now, although TXU
25 leases office space in Irving, the land in question is 10

1 miles from the company's closest operations. The property's
2 in the streets of Hunter Ferrell Road and TXU's operations
3 do not overlap or intersect at any point.

4 The Debtor's investigation led by the Debtor's
5 claims evaluation team related to the discovery request
6 built upon the earlier investigation and involved, among
7 other things, a review of multiple internal software systems
8 including the mining and counting system maintained by
9 Luminant Mining's Real Estate Group through which it is
10 possible to review all the co-leases to which any company
11 entity is a party as well as the company's residential
12 customer payment system which, again, Ms. Stewart received
13 notice of the party in her capacity as a former customer, so
14 she would have been included in that search.

15 Second, a review of hardcopy books and records
16 maintained by the Debtor's land department; third, a review
17 of Dallas County property records; and, finally, general
18 internet searches.

19 These results found no documents indicating that
20 EFH has any ownership or leasehold interest in the property
21 described in Ms. Stewart's discovery request, no indication
22 that EFH has any operations that touch the property, no
23 documents indicating any relationship between Ms. Stewart
24 and EFH and no other documents that were responsive to the
25 request in any way.

1 Your Honor, at this time, I'd like to move both
2 Mr. Kotarba's written declarations and his proffered
3 testimony into evidence.

4 THE COURT: Any objections? It's admitted.

5 MS. YENAMANDRA: Thank you, Your Honor.

6 MR. STEWART: I object.

7 THE COURT: Sir, if you're going to participate in
8 the hearing, it would be helpful if you were at counsel
9 table, not in the back of the Courtroom.

10 MR. STEWART: Well, I have a counsel with me.

11 THE COURT: Well, then why don't you approach?

12 MS. YENAMANDRA: Again, Your Honor, we're not
13 aware of Ms. Stewart having counsel, but we will yield the
14 podium as necessary.

15 MR. STEWART: This is Charles -- I need to
16 clarify. Marco Montemayor is not here today. My counsel,
17 Charles Montemayor from Dallas is here today.

18 THE COURT: All right. And you're Mr. Stewart,
19 for the record. Yes, sir.

20 MR. MONTEMAYOR: With the Court's permission, Your
21 Honor, I'm here, Your Honor, because Mr. Stewart has asked
22 me to try to comply some part with the order of the Court in
23 view of the fact that counsel that was in this case has
24 withdrawn as of this week. And we don't know whether or not
25 he has submitted all of the information that we had sent to

1 him to submit to the Court. So I am new. I haven't had an
2 opportunity to meet counsel on the opposing counsel and I
3 haven't had a chance to talk to Mr. Seitz who was on this
4 case.

5 And I have information primarily to the fact that
6 Mr. Stewart here wants to submit information to substantiate
7 the fact that the properties that have been testified as not
8 sufficient enough to prove the proof of claim that he has
9 submitted to the Court. And that's the main thing that Mr.
10 Stewart now asks the Court for that opportunity, Your Honor.

11 THE COURT: Okay. Well, I'm certainly going to
12 allow Mr. Stewart to be heard either individually or through
13 you, but to put some focus on what we actually are dealing
14 with presently, the question specifically at this point was,
15 was there an objection to the admission of the declaration
16 of evidence and the proffer of evidence that was just made
17 to the Court and was there any objection to its admission
18 into evidence.

19 MR. MONTEMAYOR: Yes, Your Honor.

20 THE COURT: You certainly can cross examine the
21 witness. That's not an issue. Obviously you have a right
22 to cross examination, but we're dealing with the direct
23 evidence.

24 MR. MONTEMAYOR: Yes. Mr. Stewart has invited me
25 to say that he's objected to the presentation regarding

1 that.

2 THE COURT: And do you know the basis?

3 MR. MONTEMAYOR: He would have to explain it, Your
4 Honor. Like I said, I haven't had an opportunity to talk to
5 Gary Seitz regarding the attorney in this case who just
6 withdrew the case.

7 THE COURT: All right. Mr. Stewart, what's your
8 evidentiary basis for objecting to the evidence?

9 MR. STEWART: They haven't done their due
10 diligence. I have the documentations that I actually
11 submitted in the proof claim at the very beginning and I
12 have a list of easements that go across our properties.

13 THE COURT: All right. Well, that's something
14 that you can address in cross examination of the witness.
15 That doesn't go to whether the actual evidence submitted is
16 admissible and obviously whatever you do in cross would --
17 might affect the weight or that the Court would give to the
18 evidence that's already been admitted, so I'll overrule the
19 objection to the admission of the evidence, so the
20 declarations and proffer are admitted into evidence.

21 I'd like to -- before I open up, Mr. Kotarba --
22 fair enough -- to cross examination, I'd like the Debtors to
23 finish their presentation. So if you'd have a seat, sir,
24 and we'd yield the podium back to the Debtor's counsel and
25 she can finish her presentation and then if you wish to

1 cross examine the witness I'll make him available.

2 MR. MONTEMAYOR: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 MS. YENAMANDRA: Thank you, Your Honor. With the
5 inclusion of Mr. Kotarba's proffered testimony and his
6 declarations, we've made the bulk of our direct case. But
7 it's probably helpful to provide some context before we put
8 Mr. Kotarba on the stand.

9 THE COURT: Okay.

10 MS. YENAMANDRA: So starting from the beginning,
11 the -- Ms. Stewart filed three proofs of claim. In some
12 instances, Mr. Stewart signed the proof of claim but in all
13 instances Ms. Stewart was listed as the claimant. Again,
14 the first one was filed before the bar date for an
15 unliquidated amount. The second one was filed after the bar
16 date purporting to amend the first proof of claim and was
17 for \$1.8 billion.

18 The first proof of claim is the one that included
19 a cover note from Mr. Charles Montemayor, a Texas counsel,
20 and I'll note that that proof of claim was filed October
21 20th, 2014, so these are hardly new allegations that we're
22 discussing today.

23 Both proofs of claim were based on the same set of
24 alleged facts. First, that the Debtors owned or controlled
25 certain land parcels; second, that certain mining activities

1 occurred on the land parcels which gave rise to mineral
2 rights that the Stewarts assert an interest in; and third,
3 that the Debtors, again, own or control some sort of
4 transmission mines or pipelines that Ms. Stewart asserts she
5 owns or asserts that she otherwise has an interest in.

6 Before filing the Fourteenth Omnibus claims
7 objection which relates to the first two of the three
8 claims, the Debtors conducted a search of their books and
9 records and found no connection between either the land
10 reference and the proofs of claim, the alleged operations on
11 the land or any connection to the transmission lines or
12 pipelines.

13 The Debtors separate and apart from their
14 investigation of their books and records also reviewed the
15 materials appended to their proofs of claim in great detail
16 and, again, found nothing to suggest the Debtors were
17 connected to the land, the operations, the transmission
18 lines or the pipelines.

19 To give Your Honor a flavor of the appended
20 materials, which we have a copy of if you'd like to see
21 them, they consisted of title insurance certificates,
22 descriptions of various properties, the zoning reports and a
23 timeline of events related to the sale and purchase of the
24 land parcels.

25 Nothing in the timeline evidences any kind of

1 relationship between the land and the Debtors. Nothing in
2 the land descriptions or the title certificates demonstrate
3 that the Debtors have ever had any kind of relationship to
4 the properties or the operations at issue.

5 Consequently, based on both their independent
6 review of their books and records and the materials
7 submitted by Ms. Stewart with her proofs of claim, the
8 Debtors filed the Fourteenth Omnibus objection objecting to
9 proofs of claim 5739 and 10003 on the basis of no liability.

10 Following that filing, a few things happened. Ms.
11 Stewart retained the law firm of Geller Scali Busenkell &
12 Brown LLC to represent her interests. Mr. Gary Seitz of
13 that firm registered a notice of appearance with this Court
14 in connection with that representation on April 30th, 2015
15 at Docket number 4361.

16 Second, Ms. Stewart filed a third proof of claim.
17 Mr. Stewart signed it but, again, the claimant was listed
18 as. Ms. Stewart alleging liability on the same basis as the
19 first two proofs of claim and adding new unfounded
20 allegations regarding fraud on certain of the Debtor's
21 prepetition equity holders.

22 Mr. Seitz, the counsel of record, did not sign the
23 proof of claim and neither he nor his firm appear anywhere
24 on the proof of claim.

25 Third, Mr. Stewart and what I'll refer to as his

1 agent, Mr. Marco Montemayor, filed a number of papers on the
2 docket at Docket number 5384, 5716, 6101 and 6934 and
3 submitted various materials to Kirkland.

4 THE COURT: Can I interrupt for a moment. Can you
5 give me the docket number again? I'm sorry, for the notice
6 of appearance.

7 MS. YENAMANDRA: Yes, 4361 was the original notice
8 of appearance and the withdrawal was at Docket number 7343.

9 THE COURT: Okay. I'd like to look at those, just
10 give me a minute, 7343?

11 MS. YENAMANDRA: Yep. Your Honor, I can provide
12 some context around the filing of the -- the timing of the
13 filing of the withdrawal.

14 THE COURT: All right. Just, before you get that,
15 I just wanted to look at it, so just give me a moment.
16 That's what I thought it was. Is Mr. Seitz present or
17 anyone from Geller present in court? All right. I hear
18 nothing. Give me just a moment. All right. Sorry to
19 interrupt. You can proceed.

20 MS. YENAMANDRA: Thank you, Your Honor. So as I
21 noted, following the filing of the Fourteenth Omnibus
22 objection, Mr. Stewart and Mr. Marco Montemayor filed a
23 number of materials on the docket, submitted various
24 materials to Kirkland, again, kind of continuing on the
25 theme that we saw with the first two proofs of claim.

1 These materials continued to reference actions
2 taken by entities with no relationship to the Debtors, to
3 name a few AT&T, Verizon, Allstate Insurance, Edison
4 International, Gifco Properties and (indiscernible) as well
5 as claims related to land parcels with no relationship to
6 the Debtors, again, 1800 Hunter Ferrell Road, which is one
7 of the few identifiable land parcels mentioned, which again
8 sits roughly 10 miles from the closest company operations.

9 These submissions of materials that make various
10 allegations but do not show any liability on the part of the
11 Debtors continued up until this morning when Mr. Montemayor
12 filed a statement of facts identifying -- it's unclear
13 whether it's Ms. Stewart or Mr. Stewart as a major interest
14 holder in TXU and Edison International as it relates to the
15 solvency of Oncor. This is at Docket 7369.

16 Your Honor, candidly, we don't know the basis of
17 these allegations. We'll let Mr. Stewart speak for himself
18 but, again, it seems to ride the theme of the first two
19 proofs of claim where there's nothing showing any liability
20 on the part of the Debtors.

21 To date, neither Ms. Stewart, who is the only
22 actual claimant here who has filed a proof of claim, nor any
23 of her representatives or agents have actually filed a
24 response to the Debtor's claims objections and consequently
25 the Debtors did not file a formal reply.

1 Instead, based on the materials we received,
2 informal communications between the Stewarts, their agents,
3 their representatives and the Debtors and cognoscente of the
4 Court's time and resources, the Debtors agree to adjourn the
5 claim's objections to, one, hopefully develop a consensual
6 resolution and, two, again, quadruple check what we knew to
7 be true from our first review of our books and records, that
8 we had no relationship to any of the allegations in the
9 proofs of claim.

10 Before I quickly touch upon the quadruple check
11 that we did, we wanted to make clear that Mr. Ken Stewart
12 has not filed any proofs of claim. It has not been made
13 clear to the Debtors whether he believes he has any claims
14 separate and apart from the ones filed by his mother.

15 If he does, those claims have never been properly
16 asserted or filed with the Debtors or filed on the claims
17 register, excuse me, and we would seek to expunge those
18 claims on the same basis as the claims asserted by Ms.
19 Stewart.

20 So very quickly to run through what the Debtors
21 did to review the proofs of claim and appended materials, we
22 of course rechecked our books and records, confirmed
23 independently there was no relationship to the land, the
24 mining operations, the transmission lines or the pipelines.
25 Second, members of the Debtor's legal team both in-house and

1 at Kirkland engaged in telephonic and in-person meetings
2 with Mr. Marco Montemayor, who professed to be the agent for
3 Mr. Stewart, to understand the asserted claims. These did
4 not result in the production of any additional material from
5 any one purporting to act on behalf of the Stewarts
6 evidencing a relationship between their claims and the
7 Debtors.

8 Third, and this will provide some context around
9 the withdrawal, Mr. Seitz served certain discovery requests
10 on the Debtors asking the Debtors to produce any documents
11 that relate to leases, easements or agreements between the
12 Debtors and the Stewarts or between the Debtors and the
13 parcels of land identified in the proofs of claim.

14 We did another search of our books and records and
15 found no relationship. We did also kind of going above and
16 beyond the call of duty, did an online search for a sample
17 of the document request and our results fall into three
18 buckets. Some of the references yielded no results at all.
19 Some of them referenced -- some of them yielded results but
20 showed no relationship to EFH. For example, we found a
21 mortgage to Stewart and Susan (indiscernible) who we have no
22 reason to believe had any connection to Mr. Kenneth and Ms.
23 Kukja Stewart. Another result was a deed grant from Ms.
24 Stewart to a company that we understand the Stewart family
25 formed several years ago.

1 And then finally many of the results showed no
2 relationship between the land and the Stewart family. For
3 example, there is a 1986 deed from Las Colinas Corporation
4 to Woodrow and Co. and an assessment of non-payment of
5 homeowner fees from a Mr. Robert (Indiscernible), again,
6 basically nothing showing a relationship to the Debtors or
7 in some instances even to the claimant.

8 After providing these results to Mr. Seitz, Mr.
9 Seitz withdrew as counsel and that notice of appearance as I
10 mentioned is at Docket 7343.

11 So in sum, Your Honor, Ms. Stewart and to the
12 extent he asserts any of his own claims based on the same
13 allegations, Mr. Stewart, have not alleged facts sufficient
14 to support legal liability and we commit that these proofs
15 of claim are invalid on their face.

16 The Debtors have undertaken an exhaustive search
17 to confirm they have no relationship to the Stewarts, the
18 land parcels at issue, the mining operations, the
19 transmission lines, the pipelines or any of the mine and
20 lease agreements that are referenced in the proofs of claim
21 and for this reason, Your Honor, we would ask that you
22 expunge the claims.

23 At this time, we'll turn the podium over and
24 reserve for rebuttal as necessary, unless Your Honor has any
25 questions.

1 THE COURT: I don't have any questions. I want to
2 take a very short recess, though.

3 (Recess)

4 CLERK: All rise.

5 THE COURT: Please be seated. All right, well, we
6 have a problem in that Mr. Seitz has purported to withdraw
7 without notice to the Court, without motion and without a
8 court order. And under our local Rule 9010-2(b), if you
9 have a matter pending before the Court, which he does, and
10 you are not substituting an attorney admitted before the
11 bar, which he has not, your representation continues until
12 the Court says it doesn't.

13 I've tried to contact Mr. Seitz directly and got
14 his voicemail. As far as I'm concerned, he's in contempt of
15 court by not being here at a noticed hearing and I'm not
16 willing to proceed right now without counsel for Mr. Stewart
17 who knows something about what's going on in this case,
18 since the one he brought obviously doesn't, before the Court
19 so we can have a substantive discussion of the merits with
20 proper representation of Mr. Stewart.

21 So we're going to continue for the minute or the
22 time being this matter until I can hopefully reach Mr. Seitz
23 or someone can reach Mr. Seitz and get him in court where he
24 belongs and we can have this matter addressed on the merits.
25 And we will take the bar date motion or, excuse me, the

1 class group claim motion.

2 Don't anybody go anywhere. We're going to address
3 this today one way or the other. But hopefully we'll be
4 able to contact Mr. Seitz and get him here. I know he's
5 generally not in the Delaware office. He operates out of
6 Philadelphia, so I'm not sure exactly how this will work,
7 the nuts and bolts of it.

8 So Mr. Stewart, we're going to hold off. All your
9 rights are reserved. You'll get your opportunity to speak
10 hopefully through Mr. Seitz or at least I'll be able to
11 question Mr. Seitz about what exactly is going on and then
12 we'll figure out how to proceed.

13 So if you could have a seat back in the gallery
14 again, they will hold your matter for the time being and
15 we'll move on to the class proof of claim matter.

16 I think Mr. Hogan's here. I see him in the
17 gallery.

18 MR. HUSNICK: Your Honor, before we move on, Chad
19 Husnick from Kirkland & Ellis. I had one counsel for the
20 EFH indentured trustee asked me -- they're in the Court
21 today and I believe they'd like to be excused. There was an
22 order filed under certification of counsel last night.
23 Unless Your Honor had any questions and we didn't have a
24 formal presentation on that order.

25 THE COURT: I thought we were going to -- I

1 thought doing that was going to avoid him having to travel
2 was the whole point you asked for permission to file the
3 CNO.

4 MR. HUSNICK: That's correct, Your Honor. So
5 unfortunately we -- because it wasn't entered we had him
6 down here.

7 THE COURT: Right.

8 MR. HUSNICK: But I want to just follow up and
9 make sure.

10 THE COURT: All right. I've signed that order, so
11 Mr. Pedone, you can get back on a plane.

12 MR. HUSNICK: Thank you, Your Honor.

13 MR. PEDONE: Thank you, Your Honor.

14 THE COURT: You're welcome. So let's take the
15 next matter.

16 MAN: Your Honor, may I be excused?

17 THE COURT: Yes, Mr. (indiscernible).

18 MAN: Oh, thank you. Happy holidays.

19 THE COURT: You, too, sir. I'm going to get you
20 to shave that beard off, Mr. (indiscernible).

21 MAN: (Indiscernible). Thank you.

22 THE COURT: You're welcome. Mr. Hogan?

23 MR. HOGAN: Good morning, Your Honor.

24 THE COURT: Good morning.

25 MR. HOGAN: Daniel Hogan of Hogan McDaniel on

1 behalf of the punitive class claimants, Your Honor. Your
2 Honor, this is our motion for application of federal rule of
3 bankruptcy procedure 7023 and to certify a class pursuant to
4 federal rule of civil procedure 23.

5 The class claimants, Mr. Joe Aribé, Michael
6 Cunningham and Michelle Zieglbaum are unmanifested
7 claimants. We move pursuant to Section 105 of Title 11
8 together with Rules 9014 and 7023 afore ordered asking you
9 to exercise your discretion to apply 7023 to the class
10 claimants class proof of claim which was filed on behalf of
11 unmanifested asbestos claims.

12 Jeanne Mirer is the attorney of Mirer Mazzocchi
13 Schalet & Julien PCCL or PLLC. She's the class
14 representative. She has been admitted in this case pro hoc
15 vice, Your Honor. Her affidavit was attached to the amended
16 motion and, Your Honor, preliminarily I would ask how the
17 Court wishes to proceed.

18 We have, of course, attached affidavits to our
19 application. Those affidavits are largely uncontested by
20 the Debtors. The Debtors in their response attached a
21 number of web searches.

22 But aside from that, in an affidavit from the
23 noticing agent, there isn't largely a large amount of
24 evidence in this matter. And so I don't know if the Court
25 wants to proceed to argue the merits of the motion or if you

1 would prefer to have schedule some sort of evidentiary
2 hearing and that preliminarily I wanted to ask the Court how
3 it wanted to proceed.

4 THE COURT: Well, what's the Debtor's position on
5 that?

6 MR. ROGERS: Your Honor, the affidavits are
7 obviously hearsay. It is true that for purposes of this
8 hearing there's nothing in the affidavits that we believe
9 has any impact on the Court's determination of the motion.
10 Nevertheless, we don't agree that the affidavits are
11 admissible evidence and we don't think they should come into
12 evidence.

13 I don't think that there is an evidentiary issue
14 to be decided in the case, so I don't think it makes any
15 sense to have an evidentiary hearing. But, you know, we do
16 not agree that the affidavits should come into evidence at
17 this time.

18 THE COURT: All right. Mr. Shore?

19 MR. SHORE: Your Honor, Chris Shore from White &
20 Case on behalf of the investor consortium.

21 THE COURT: You're fine.

22 MR. SHORE: We filed a joinder. We have no
23 objection to the declarations going into evidence provided
24 that -- and we could waive cross examination -- provided
25 that counsel stipulates on the record that each of the

1 affiants receive actual notice of the bar date order and
2 each of the affiants has filed a proof of claim in the
3 action.

4 THE COURT: Mr. Hogan?

5 MR. HOGAN: Your Honor, I know from firsthand
6 accounts that they in fact did not receive actual notice of
7 the bar date. They became aware of the bar date but they
8 didn't become aware of the bar date by virtue of the notice
9 provided by the Debtor through their notice process pursuant
10 to the bar date order. And so I can't attest to that issue.

11 THE COURT: All right. Give me a second.

12 MR. HOGAN: Certainly.

13 THE COURT: I assume your affiants aren't present
14 in court.

15 MR. HOGAN: That's correct, Your Honor. It wasn't
16 exactly clear, Your Honor, whether this was going to be an
17 argument on the motion or whether it would be for the
18 purposes of scheduling an evidentiary hearing since we do
19 have the preponderance of the evidence standard that we need
20 to meet with regard to our application and I presume that
21 there would be some objection to the entry of those
22 affidavits as evidence.

23 THE COURT: I don't think that it's necessary at
24 least at this point to have an evidentiary hearing and I
25 don't think it's necessary to admit the affidavits. I'd

1 like to hear discussion of the law and based on the record
2 that exists and depending on how that goes I'll determine
3 whether to rule on the merits or whether to put this over
4 for an evidentiary hearing.

5 MR. HOGAN: That's fine, Your Honor. Thank you.

6 THE COURT: You're welcome.

7 MR. HOGAN: Your Honor, as you're well aware, on
8 July 15th the Court set a bar date of Monday, December 14th,
9 2015 for claimants having unmanifested claims to file a
10 proof of claim.

11 Generally, Your Honor, you followed the case law
12 in In Re: Grossman from the Third Circuit and directed that
13 such persons who were employees and contractors who
14 encountered asbestos in the asbestos Debtors' facilities or
15 who were exposed by take-home exposure at a household to
16 file what was characterized as an unmanifested asbestos
17 claim. In order to have it discharged in this case. You
18 relied, of course, on the Jeld-Wen Van Brunt matter.

19 Accordingly, you set two proof of claim, discrete
20 proof of claims, one for manifested and one for
21 unmanifested. You characterized the notice scheme such that
22 everyone presumably would be noticed. The class claimants
23 are persons who are, in fact, they hold unmanifested claims
24 and who as I've said earlier did not receive notice of the
25 bar date.

1 This motion they filed on behalf of themselves and
2 others similarly situated individuals and in order to
3 preserve the rights as well as the right of their fellow
4 workers and loved ones who feared that they may be
5 unwittingly have their rights disposed of by the bar date.

6 I attached, as I indicated earlier, the affidavits
7 of Mr. Joe Aribé, an insulator with the Heat and Frost
8 Insulator and Allied Workers of Local 222 in Deer Park,
9 Texas who for over 20 years was employed by Vasco. His
10 affidavit is replete with indications that he was exposed to
11 asbestos, asbestos containing dust from work as a tradesman
12 at the plant.

13 He was also exposed, Your Honor, during the yearly
14 shutdowns which contained apparently significant exposures
15 when carpenters and painters would sand down asbestos
16 containing joint compound and the asbestos would apparently
17 rain down on him. They were provided, interestingly, no
18 uniforms, Your Honor, and therefore, had to take home their
19 clothes. They would take these clothes home and presumably
20 other individuals in the family would then be exposed to the
21 asbestos by the take-home exposure.

22 Importantly, Your Honor, he's also in a position
23 as the director of field educational research at the AFL CIO
24 and would -- you would have expected that he would have
25 heard of the bar date. He did not.

1 So despite his extensive exposure, he is not yet
2 manifested, so he is perfectly characterized as an
3 unmanifested claimant.

4 Mr. Cunningham also was not suffering from any
5 exposure to asbestos. However, he was an insulator as well
6 in the same union as Mr. Aribé working specifically at the
7 WA Parish Power Plant.

8 Mr. Cunningham, likewise, did not receive any
9 notice from the Debtors were there notice program of the EFH
10 bar date, even though he's active in the union and even
11 though you would expect him to have received notice through
12 those channels.

13 Mr. Cunningham represents a class of people who
14 have been exposed in an asbestos plant owned by the Debtors
15 and who has not yet manifested and asbestos-related disease.

16 Michele Ziegelbaum is a family member of a former
17 contractor who performed work at the Beaver Generating
18 Station in Clatskanie, Oregon, listed as one of the power
19 and nuclear plants owned and operated by the asbestos
20 Debtors.

21 Her husband suffered from mesothelioma as a result
22 of his exposure. However, Ms. Ziegelbaum has not manifested
23 any asbestos injuries to this point. Interestingly, her
24 husband did not receive any notice of the unmanifested bar
25 date by either direct mailing which would have allowed her

1 to file the proof of claim.

2 The claimants filed, in fact, did file their proof
3 of claim before the bar date on behalf of the nationwide
4 class of people who had been exposed either through work or
5 through take-home exposure.

6 In terms of asking the Court to exercise its
7 discretion, we believe that the courts in this district as
8 well as in the circuit have permitted the exercise of
9 discretion to allow the filing of a class proof of claim
10 relying largely on In Re: American Reserve Corp case and
11 also In Re: Zenith Labs, which is at 104 B.R. 659, that's a
12 bankruptcy from the District of Delaware -- or District of
13 New Jersey, excuse me.

14 The right to file a proof of claim is governed, as
15 you know, Your Honor, by 11 USC 501. 501's of course silent
16 on actually whether or not a class proof of claims may be
17 filed but other courts have looked to 901(4)(c) which allows
18 a court at any stage of a proceeding to direct that one or
19 more of the other rules of Part 7 shall apply.

20 Consistent with 904(1)(c) [SIC], the application
21 of federal rule of bankruptcy procedure 702(3) the proof of
22 claims is within the discretion of the Court. That's In Re:
23 Tarragon Corp. and also In Re: American Reserve Corp.

24 The Third Circuit specifically has not considered
25 the question but, as I said, courts in the circuit have

1 permitted the class proof of claims to be filed at your
2 discretion.

3 The Court at In Re: American Reserve articulated
4 compelling arguments in support of interpretation of the
5 bankruptcy rules that permits class proof claims as being
6 consistent with the legislative intent of the drafters of
7 the rules. In Re: Zenith Labs holding that the policies
8 underline class action in congress explicit provision for
9 the application of federal rule of -- or federal rule of
10 civil procedure 23. The bankruptcy proceeding supports the
11 view in the latter cases In Re: American Reserve set forth
12 as the better rule.

13 The discretionary factors within the scope of the
14 Court's review weigh strongly in favor of permitting claims
15 (indiscernible) to proceed with the class proof of claim.
16 In Re: Tarragon Corp. in that case the court ordered
17 delineated factors the court should consider when
18 determining whether to exercise its discretion to allow
19 class proof of claim.

20 Those factors included prejudice to the Debtor and
21 to other creditors, prejudice to the punitive class members,
22 efficient estate administration, the conduct to the
23 bankruptcy case -- conduct in the bankruptcy case of the
24 punitive class representatives in the status of the
25 proceedings of other courts.

1 Class claims motion here, Your Honor, is
2 presumptively timely. The motion was filed before the bar
3 date. The class proof of claims were both filed before the
4 bar date.

5 In deciding whether a claim is prejudicial to the
6 Debtor and to the efficiency of the administration of this
7 estate, courts look for the timeliness of the motion and the
8 filing of the underlying proof of claim. As I stated, we
9 filed before the deadline.

10 District courts have held that 702(3) is properly
11 considered when a class proof of claim or a motion for class
12 certification is filed contemporaneous with a submission of
13 the class proof of claim. It is right and appropriately
14 considered at the time of the filing of the motion for class
15 certification when timely filed with a proof of claim.

16 There's been no delay here, Your Honor. As
17 argued, the class claimants have conducted themselves
18 diligently and consistent with the efficient administration
19 of this estate. This is their first appearance in the case,
20 Your Honor. It's not as if they've waited.

21 The lack of delay as to the Debtor applies with
22 equal force to the other creditors. They're not injured in
23 any way by this motion.

24 Second, failure to exercise the discretion to
25 permit a class proof of claim would result in severe

1 prejudice to persons similarly situated to the class
2 claimants. The strongest single factor warning the exercise
3 of discretion to permit a class proof of claim is far and
4 away prejudiced to the punitive class members.

5 Well, our -- well, claimants Aribé and Cunningham
6 as contractors were presumptively entitled to perceive
7 direct mail pursuant to the notice procedures previously
8 addressed by this Court. They received no such notice.
9 Similarly, claimant Ziegelbaum is married to a person who
10 suffered from meso and her status as a family member of such
11 should have made her readily identifiable for the purpose of
12 mailing requirements in the notice scheme. Class claimants
13 can hardly be said to be unknown unknowns as their names
14 resultatively appear in the business records.

15 In the absence of class certification, such
16 persons with unmanifested injuries dealing claims under
17 Grossman would be subject to discharge. Prejudice then to
18 those persons would be great. They would effectively be
19 brought to due process which the Court has explicitly found
20 in its July 15th, 2015 order that they were due.

21 Critically, the availability of relief pursuant to
22 Grossman should not weigh against the Court exercising its
23 discretion with respect to Rule 23 in granting this motion.
24 As this Court has held, the bar date was required as to all
25 claims by the plain language of the statute and on such

1 basis the that the Court determine a priority the scope of
2 due process protections which each type of unmanifested
3 claimant is entitled.

4 Should this motion not be granted, such similarly
5 situated class claimants would not file individual proof of
6 claims and may nonetheless be entitled to a pro hoc, post
7 pro hoc, post hoc case-by-case evaluation of other due
8 process rights per Grossman.

9 Rather, by extending Rule 23 to the proof of
10 claims process, this Court may satisfy the requirements in
11 order in terms of protecting the bar date.

12 Finally, Your Honor, the case-by-case analysis
13 under Grossman also obviates the concern of an opt-out class
14 will provide an end around to the bar date. Any end around
15 made by the punitive class members opting out pales in
16 comparison to the end run made by a flood of potential
17 claimants seeking an individualized review of their due
18 process rights per Grossman. Thus, the efficient
19 administration of the estate is enhanced by the Court's
20 exercise by applying Rule 7023.

21 In applying 7023, Your Honor, the Court should
22 grant the motion to proceed the class, the requisite showing
23 under 7023 having been made to secure the class. Generally,
24 Your Honor, what we're looking for is a general class with
25 two sub classes, one class for those individuals who were

1 exposed at work and yet are unmanifested and then a second
2 class for those who were exposed by take-home and who are,
3 again, yet unmanifested.

4 Rule 23 standard requires, obviously, a couple
5 things, Your Honor, a number of things. With regard to
6 23(a), we obviously have to demonstrate numerosity,
7 commonality, typicality and adequacy of representation.
8 These are threshold issues that we have to demonstrate,
9 hence my comments earlier about the preponderance of the
10 evidence standard and whether we needed and evidentiary
11 hearing.

12 Once we prove 23(a), we then move to 23(b) and
13 we'll do that, Your Honor, but first let me address the
14 23(a) requirements. First, Your Honor, (indiscernible),
15 (indiscernible) requires a finding of the class
16 representative be appointed only if the joinder of all class
17 members would be impractical.

18 We've seen from the response of the Debtors
19 there's a number of claims that have been filed in excess in
20 the thousand, Your Honor. It'd be impractical for the Court
21 to join all those individuals in a single action.

22 Given the scope of the facilities operated by the
23 asbestos Debtors, likewise, lends itself to the fact that
24 joinder would be inappropriate. Class claimants bring this
25 motion on behalf of thousands of similarly situated persons

1 whose occupational -- who are occupationally exposed to
2 asbestos in the asbestos Debtor's facilities who have not
3 yet manifested claims.

4 As the district court in the Third Circuit has
5 found, the numerosity requirement may be met by less than
6 1000 class members and that's in Beck v. Maximus Inc., 457
7 F. 3d at 294, finding a proposed class of 776 claimants
8 satisfied the numerosity requirement.

9 With regard to the next element under 23(a), Your
10 Honor, commonality, a punitive class satisfied 23(a)'s
11 commonality requirement if the main plaintiff shared at
12 least one question of fact or law with grievances of the
13 proposed class.

14 Here, Your Honor, the bar is not high. Courts
15 have acknowledged a commonality be present even when all
16 members of the plaintiff class have not suffered an injury.
17 That's Baby Neal v. Casey 43 F. 3d 48, where class members
18 don't have identical claims In Re: Credential Insurance 148
19 F. 3d at 311 and most dramatically where some member claims
20 were arguably not even viable, Sullivan v. DB Investments,
21 Inc., 667 F. 3d at 273.

22 The focus on commonality, Your Honor, the part in
23 query is not on the strength of each class member's claim
24 but instead on whether the defendant's conduct was common to
25 all the class members, the focus being on the defendant's

1 conduct. Here we have class-wide answers. The defendant's
2 conduct was common to all the class members and common
3 questions lead to common answers such as these alleged
4 misconduct and harm it caused whether it would be common to
5 all the class members.

6 Here the common questions relate to the health
7 hazards of asbestos, the Debtor knew about those hazards,
8 their failure to warn and the ineffectiveness of the safety
9 products that they utilized for their employees. All class
10 claimants share the above class-wide answers to these
11 questions with the similarly situated class of the persons
12 who they seek to represent.

13 Finally, Your Honor, a single common question
14 regarding Debtor's behavior is sufficient to meet the
15 commonality requirement, thus a class may be certified even
16 in the presence of individualized determinations which may
17 be necessary to completely resolve the claims of each
18 punitive class member in the case. That's In Re: Community
19 Bank of North Virginia versus Mortgage Lending Practices
20 litigation PNC Bank NA 795 F. 3d at 399.

21 Next, Your Honor --

22 THE COURT: Mr. Hogan, I do apologize. I have Mr.
23 Seitz on the phone, so I'm going to take a recess and talk
24 to him.

25 MR. HOGAN: Certainly, Your Honor.

1 (Recess)

2 CLERK: All rise.

3 THE COURT: Please be seated. Just very quickly
4 before we continue with Mr. Hogan, and I do apologize. I
5 spoke with Mr. Seitz and he is in court in Philadelphia, but
6 he is available to participate by telephone, so we will
7 obviously deal with Mr. Hogan's matter at -- depending on
8 when we're done there. We'll take a recess and we'll
9 reconvene the Stewart issue at 1:00 PM, and Mr. Seitz will
10 participate by court call to the extent there are any
11 issues.

12 MR. HUSNICK: Your Honor, my understanding is that
13 Mr. Kotarba has a deposition in New York scheduled for 2:00
14 o'clock. You've -- I'm sorry?

15 MAN: I already moved it from 1:00 to 2:00. I
16 can't --

17 MR. HUSNICK: It's in the --

18 THE COURT: But he's a witness. I had a hearing
19 booked all day today.

20 MR. HUSNICK: Understood. Can we try and move it
21 again?

22 MAN: I'll ask. I apologize, it's my deposition.
23 Is there a possibility that we could do it earlier than
24 1:00?

25 THE COURT: No. He's in court.

1 MR. HUSNICK: While we're doing the asbestos
2 argument, we'll step out into the hall and I'll call his
3 counsel.

4 THE COURT: Yeah, see what you can do. I mean,
5 Mr. Stewart traveled from Texas.

6 MR. HUSNICK: Understood.

7 THE COURT: This was the time for the hearing. I
8 know it's inconvenient and I know everybody expected it
9 would actually be done this morning, but circumstances have
10 evolved in such a manner that we're, you know, in a tough
11 spot.

12 There may be factual questions, if nothing else, I
13 need to ask Mr. Seitz about what was done, what was said, et
14 cetera. He -- I -- based on our preliminary conversation, I
15 don't think I'll ask him to abdicate on behalf of Mr.
16 Stewart, but it'll be helpful to have him on the phone.

17 MR. HUSNICK: Understood, Your Honor. I'll step
18 out and try and resolve this action.

19 THE COURT: Okay, thank you.

20 MR. HUSNICK: Thank you.

21 THE COURT: Let me know. Okay, Mr. Hogan. Again,
22 I apologize.

23 MR. HOGAN: Thank you.

24 THE COURT: Again, I apologize.

25 MR. HOGAN: No, Your Honor, not a problem. Just

1 don't hold me in contempt, Your Honor.

2 THE COURT: I won't, you're here.

3 MR. HOGAN: Your Honor, returning to my argument,
4 I believe I left off with regard to 23(a) with regard to the
5 typicality requirement, that being the typicality
6 requirements of 23(a) where a class rep can satisfy those
7 requirements where they possess the same interest and same -
8 - and suffer the same injuries as the other class members.

9 To avoid a typicality for the purposes of class
10 certification, courts often ask are the class claimants
11 claims typical in the common sense of the class, suggesting
12 that the incentives of the plaintiffs are aligned with those
13 of the class.

14 Factual differences will not render a claim
15 atypical if the claim arise from the same event or practices
16 or course of conduct that give rise to the claim of the
17 class members. Here -- and further, Your Honor, even where
18 there's the presence of unique defense, that alone will not
19 render a class claim as atypical.

20 Here, Aribé and Cunningham are members of the
21 class occupationally exposed in plants designed my asbestos
22 debtors, and Ziegelbaum is a family member who was
23 occupationally exposed or a family of someone who was
24 occupationally exposure, and thus, the risk of asbestos-
25 related disease by take-home exposure. As such, all class

1 claimants may then fill out proof of claim forms and are
2 members of the punitive class.

3 Further, the claims raised by the class claimants
4 that the asbestos debtors negligently, and with knowledge of
5 the health hazards posed by asbestos, exposed them to
6 asbestos and its attendant harm is a typical legal theory
7 common in every state in which it could be pled.

8 Further, class claimants stand in the same
9 relation to a legal injury as every other similarly-
10 situation person within the class; that is, each holding a
11 claim as accrued under Grossman, though they have not yet
12 manifested a physical injury. In Re: School Asbestos
13 Litigation, 789 F. 2d at 1000. The typicality requirement
14 was satisfied because the plaintiffs theories of liability
15 were harmonious and the named plaintiff stood in the
16 position similar to the other class members.

17 Next, Your Honor, the final issue under 23(a)
18 relates to whether the class representative and their
19 attorneys can fairly and adequately represent the interests
20 of their clients. Rule 23 requires that the class rep and
21 class counsel fairly and adequately protect the interest of
22 the class and not the class rep. By the way, Your Honor,
23 just FYI, obviously Jeanne Meyer is the class action
24 attorney in this. To the extent that you were to grant this
25 motion, she's the one who would prosecute the class proof of

1 claim, Your Honor.

2 The adequacy of representation examines two
3 matters, the interest and incentives of the class
4 representatives and the experience and performance of the
5 class counsel. By that inquiry, Rule 23(a) adequacy
6 requirement is designed to uncover conflicts of interest
7 between the name parties and the class they seek to
8 represent. As to class counsel, the adequacy requirement
9 assures that the counsel possess adequate experience and
10 will vigorously prosecute the claim, and will act at an
11 arm's length from the defendant. As attested to in the
12 Meyer affirmation, which is attached to our motion, class
13 counsel is an experienced attorney well versed in bringing
14 class actions in Federal Court and is, therefore, able to
15 provide vigorous prosecution to such claims against the
16 Debtor. There is no conflict here as between the classes
17 because as to both sub-classes, they are individuals who,
18 depending on whether they were exposed at work or by take-
19 home, they still are unmanifested asbestos claimants and
20 they're agnostic to one another, Your Honor.

21 So, Your Honor, what we have here is an alignment
22 of interest and incentives between the class representatives
23 and the rest of the class. So long as the class members are
24 united in asserting a common right, such as achieving the
25 maximum possible recovery for the class, the class interests

1 are not agnostic for representation purposes. Thus, there
2 is no fundamental inner class conflict that prevents class
3 certification.

4 The class claimants in the claim they seek to
5 represent all proceed on the same theories and suffer the
6 same legal harm claims cognizable under Grossman and, yet,
7 unmanifested. Class claimants seek to protect all those
8 with unmanifested claims like them who, for reasons of
9 notice or disability or for other reasons, would not file
10 their claim by the bar date of December 14, 2015.

11 Class claimants are in no actual conflict with the
12 punitive class members, nor can they have any speculative
13 conflict be adopted by the Debtors to defeat the adequacy
14 requirement.

15 That brings us to 23(b), Your Honor. Assuming
16 that we can satisfy the requirements of 23(a), we still have
17 to meet one of the requirements of 23(b). In this instance,
18 we focus on 23(b)(3), Your Honor, which states that the
19 claimants have to satisfy or establish predominance and
20 superiority sufficient to satisfy 23(b)(3).

21 First, Your Honor, the class members are
22 ascertainable. An essential prerequisite of a class action,
23 at least with respect to actions under 23(b)(3), is that the
24 class must be currently and readily ascertainable based on
25 objective criteria. Marcus vs. BMW of North America LLC,

1 687 F. 3d 583. Thus, the movant must show, again, by the
2 preponderance of the evidence, that the class is
3 ascertainable.

4 Specifically, ascertainability inquiry is a two-
5 fold inquiry requiring first, that the class be defined
6 reference to an objective criteria, and two, that there is a
7 reliable and administratively-feasible mechanism for
8 determining whether punitive class members fall within the
9 class definition.

10 The class claimants bring this action to protect
11 the rights of similarly-situated persons who may not have
12 knowledge of the bar date, but who were entitled to file
13 individual class unmanifested proof of claims. Here, the
14 class is defined by the objective of criteria set forth in
15 the proof of claim form, and that the class claimants and
16 the persons similarly situation are present or former
17 employees and contractors who worked for the asbestos
18 debtors in one of the enumerated numbers of facilities
19 and/or family members thereof.

20 In protecting the due process rights of persons
21 within the scope of the class form -- or the claim form --
22 this Court, in its July 15, 2015 Order, devised a method of
23 direct notice and notice via targeted media outlets.

24 Implicit in both methods of notice is that the
25 punitive class claimants are readily identifiable and may be

1 readily identified by such methods. Specifically, the Court
2 ordered the debtors to make reasonable search of their
3 business records for the names and address of employees and
4 contractors of the asbestos debtors.

5 Recently, the Third Circuit found that a class --
6 found a class ascertainable where the debtor possessed all
7 of the relevant records needed to identify the punitive
8 class members. That's In Re: Community Bank of North
9 Virginia, 795 F. 3d at 397.

10 Further, while such method may entail some
11 individual review, such method is not -- such review is not
12 fatal to a finding of ascertainability. Notice of the class
13 could be improved by requiring a further individualized
14 search of the records in mailing such to the specific
15 skilled trade unions in the states where EFH plants existed
16 among other things.

17 This method would ensure sufficient notice to
18 protect these claimants' due process rights without changing
19 the verdict. Second, Your Honor, we must show that the
20 class claimants' common questions predominate over questions
21 that are individual to them.

22 Plaintiffs must further establish this for the
23 purpose of satisfying 23(b)(3). Before certifying a
24 23(b)(3) class, the District Court must evaluate, or a Court
25 must evaluate, whether (indiscernible) questions or fact

1 that the class members predominate over questions affecting
2 only individual members.

3 The focus, Your Honor, is on task to see whether
4 the proposed classes are sufficiently cohesive as to warrant
5 adjudication by representation. The focus on predominance
6 inquiry is whether defendant's conduct was common to all the
7 class members, and whether the class members were harmed by
8 the defendant's conduct. That's Sullivan vs. DB Investment,
9 Inc., 667 F. 3d 273.

10 The predominance inquiry, Your Honor, begins, of
11 course, with the elements of the underlying cause of
12 actions. Predominance requirements focus on the essential
13 elements of the class claims to be proven at trial with
14 common, as opposed to individualized, evidence. Commonality
15 and predominance together are the focus because where an
16 action is to proceed under 23(b)(3), the commonality
17 requirement is subsumed by the predominance requirement.
18 Class claimants identify the common issues, as I've stated
19 earlier.

20 In this case, class claimants seek to represent a
21 class of similarly-situated individuals who've been exposed
22 to asbestos by the asbestos debtors, and to put them at risk
23 of developing asbestos-related diseases, but who have not
24 yet become sick and, thus, have the unmanifested claims.
25 These are questions of defendant's conduct which

1 predominate.

2 The ability to satisfy the predominance standard
3 is unimpeded by the existence of different state law
4 standards with regard to the various states -- the various
5 laws of the individual states. The In Re: Sullivan case
6 that I mentioned earlier is specific to that, Your Honor.
7 So the predominance or the primacy of the injuries by these
8 individuals satisfies or overcomes the requirement
9 necessitating the predominance.

10 As they say in Sullivan, Your Honor, this
11 determination is not a mechanical, single-issue test, but is
12 a determination by looking at the claims, and it is usually
13 sufficient to establish predominance. They really look to
14 the defendant's conduct, Your Honor.

15 Finally, with regard to the superiority
16 requirement, the class proof of claim is superior method of
17 proceeding in this instance, Your Honor. 23(b)(3) requires
18 that a class claim be superior to other available methods
19 for the fairly and efficiently adjudicating the controversy,
20 and provides a non-exhaustive list of factors to be
21 considered in determining superiority, including the class
22 members interest and individually controlling the
23 prosecution of the separate actions, the extent and nature
24 of similarly-litigated issues already commenced by class
25 members, which are none in this instance, the desirability

1 of concentrating the litigation in a particular forum, and
2 the difficulties likely to be encountered in the management
3 of a class action.

4 The superiority requirement asks a Court to
5 balance the terms of fairness and efficiency the merits of a
6 class action versus those of the alternatives available
7 forms of adjudication. Here, it's our position, Your Honor,
8 that a class action is vastly superior to claimants
9 proceeding individually.

10 A class claim would ensure the broadest due
11 process of those claims that may be disposed by the bar
12 date.

13 It also comports with the Court's Order by
14 remedying the infirmed implementation of the notice scheme,
15 as demonstrated by these class claimant affidavits.

16 Not only are class proof of claims superior to
17 individual proof of claims with respect to the due process
18 and the Court's Order as established above, but the common
19 questions in fact and law are best addressed as a class,
20 thus expediting these proceedings and resulting in a
21 significant judicial efficiencies.

22 With respect to the class members' interest and
23 individually controlling the prosecution of their separate
24 actions, here, as the claims are brought by persons with
25 unmanifested injuries, no person has a significant interest

1 in controlling in the individual control of a separate
2 action at this stage. Rather, a class mechanism removes
3 what would be burdensome to individual claimants, exerting
4 the effort to protect their rights, even while injuries have
5 not yet manifested.

6 As to similar litigation, while the number of
7 individual claims filed by the asbestos debtor is not known,
8 class claimants know of no other class proof of claims being
9 brought, nor of any other prior class actions being brought
10 against the asbestos debtors.

11 With respect to the desirability of concentrating
12 the litigation in this particular forum, just as this Court
13 found it desirable to consolidate the proceedings in this
14 instant forum, by the same logic, the concentration of class
15 proof of claims is not detrimental to the claimants, and is
16 further desirable as permitting and expediting in streamline
17 process.

18 Finally, Your Honor, the class proof of claims
19 present no insurmountable challenge to the management of a
20 class action. While state law of distinctions may implicate
21 manageability concerns, they do not pose an obstacle to the
22 certification of a settlement class.

23 Furthermore, persons who are part of this class
24 who develop asbestos-related diseases -- that is, they
25 manifest -- would simply be moved from the persons with

1 unmanifested claims to those with manifested claims. And
2 like anyone else who filed an individual proof of claim for
3 unmanifested claim prior to the bar date, would be able to
4 pursue their manifested claim against the bankruptcy estate.
5 You'll recall, Your Honor, the plan, of course, provides
6 that asbestos claims are reinstated in pass-through.

7 Furthermore, 23(d) vests in the Court's
8 substantial discretion to enter orders subsequent to the
9 orders certifying the class to manage the class. This goes
10 a long way to managing any issues that may arise.

11 In closing, Your Honor, it's our position that the
12 class claim is permissible, that we've satisfied all the
13 requirements necessitated by 23(a), as well as 23(b)(3), and
14 we would offer the affidavits of Mr. Aribé, Mr. Cunningham,
15 and Miss Ziegelbaum into the record, together with the
16 affidavit of Jeanne Meyer. Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Hogan. Counselor?

18 MR. ROGERS: Your Honor, Brent Rogers from
19 Kirkland & Ellis LLP on behalf of the Debtors. I think Mr.
20 Hogan's argument is the same argument that he presented in
21 his briefs. We've responded to those arguments in our
22 briefs, and I would try not to repeat myself here.

23 What I didn't hear from Mr. Hogan was any reply to
24 our response. I want to be mindful of the Court's desire to
25 hear about the law and less about the facts. I don't think

1 we need to hear about the affidavits that were filed along
2 with this motion. I think there's ample evidence in the
3 record for the Court to apply the law that exists and deny
4 this motion.

5 There's a threshold issue, Your Honor, and that's
6 should the Court apply its discretion to apply Rule 23 to a
7 class proof of claim here. And I want to emphasize the
8 unprecedented nature of that ask in this case. This is not
9 a case where a class has been certified in another action in
10 state court or in federal court, and now the class is coming
11 to this Court and asking to file a proof of claim on behalf
12 of that class. That's the -- as In Re: Sacred Heart pointed
13 out, that's the, you know, quintessential case that's
14 appropriate for a class proof of claim. This is not that
15 case.

16 This is also not a case where the class that the
17 claimants seek to certify will go on to prosecute a cause of
18 action. The class itself has no cause of action. Because,
19 you know, there's a lot of fuzziness around the definition
20 of the class in this case, but the one thing that is clear
21 is that it is made up of unmanifested claimants. They have
22 no injury yet.

23 And as Mr. Hogan just pointed out and as they
24 pointed out in Paragraph 77 of their brief, the moment
25 someone in this class manifests an injury, they leave the

1 class and they become a manifested claimant, they go on to
2 prosecute their own claim. So what that means is that this
3 class, if certified, would really have one purpose only, and
4 that is to file a class proof of claim.

5 In none of the cases cited on either side has a
6 Court endorsed the application of Rule 23 to a class solely
7 for the purpose of filing a class proof of claim. And,
8 frankly, there's good reason for that, Your Honor. It
9 really makes no sense.

10 It doesn't serve the purpose of Rule 23. It
11 undermines the purpose of the bankruptcy rules and the bar
12 date order and the notice procedures orders that Your Honor
13 entered. So in this case, I think it's very clear that the
14 discretionary call that Your Honor has to make cuts in favor
15 of denying this motion and refusing to apply Rule 23 to a
16 class proof of claim.

17 And just to back up, Your Honor, Rule 7023 applies
18 to adversary proceedings. This is not one. To get to the
19 application of Rule 23 to a class proof of claim, you have
20 to go through Rule 9014, which is entirely discretionary.
21 In the Court's that have undertaken that analysis have been
22 very clear that applying Rule 23 to a contested matter, and
23 specifically applying it to a class proof of claim, there's
24 a heightened standard, and it's less likely to be a good
25 idea to apply Rule 23 in these circumstances than in others

1 in adversary proceedings, for instance.

2 Mr. Hogan never really grapples with the issue of
3 the Court's discretion and whether it should apply Rule 23
4 in this case. He does talk about, you know, the prior, I
5 would say, consensus in the law that it's not even
6 appropriate to apply Rule 23, or it's not even possible to
7 apply Rule 23 to a proof of claim because Rule 501 only
8 allows individuals to file proofs of claim. I'm not going
9 to make that argument here. I think it has some merit, but
10 I don't think that it's dispositive. I think there's plenty
11 of other reasons to deny in this case.

12 I do think that that prior body of law is
13 indicative of the skepticism that courts have applied when
14 they look at a class proof of claim. And I think that,
15 although that body of law has largely been moved away from
16 since the American Reserve case, I think that that
17 skepticism endures.

18 So the question is, is this the kind of case, is
19 this the right case, is this the right circumstance in the
20 case to go through the long journey from 9014 to 7023 to
21 apply Rule 23 in the first instance. And the answer there,
22 I think, is clearly no. That's setting aside whether the
23 class claimants in this case can even meet the requirements
24 of Rule 23, which I'll get to later, but I want to focus on
25 this discretionary call.

1 One thing that Mr. Hogan, again, did not respond
2 to at all is what is the impact that this class proof of
3 claim would have on this Court's prior orders. And I think
4 it's very clear that the impact is that it dramatically
5 undermines and, in fact, it renders moot Your Honor's Orders
6 in January on the application of the bar date to
7 unmanifested asbestos claims, and in July, when you entered
8 the noticing order and applied the -- or set the bar date.

9 In the W.R. Grace case at 389 B.R. 737, that's out
10 of the Bankruptcy District of Delaware in 2008, the Court
11 observed that when you're looking at an issue like this,
12 whether to certify a class on a class proof of claim, you
13 can't do it in a vacuum. You have to consider the impact of
14 the bar date. And you've got to consider, in this case, the
15 impact of the bar date that Your Honor set for unmanifested
16 asbestos claims.

17 Put simply, if this class is certified and the
18 class proofs of claim are allowed, we can say good-bye to
19 the bar date for unmanifested asbestos claims. That's
20 because any litigant or any potential claimant would then
21 later be able to come in, whether or not they filed their
22 own individual proof of claim by the bar date, they'd be
23 able to come in and leverage the class proof of claim to say
24 I'm a claimant, my rights were reserved by the class proof
25 of claim, notwithstanding the fact that I did not file a

1 proof of claim of my own.

2 And, you know, I don't think I need to remind the
3 Court, but the bar date Order that Your Honor entered in
4 January was the culmination of a long -- months' long --
5 process of multiple rounds of briefing, multiple hearings.
6 And I think the Court's Order was quite clear that not only
7 is it within the Court's discretion to apply the bar date to
8 unmanifested claims, but it's required. It's required by
9 the rules, and the Grossman construct that the Court apply
10 the bar date to unmanifested claimants. This class proof of
11 claim that the class claimants purpose to be seeking would
12 completely that context or that construct.

13 The other thing that this class proof of claim
14 would do is wipe out, you know, not just the long effort and
15 judicial party resources that went into getting the bar date
16 to apply to unmanifested asbestos claims, but after that
17 happened, as Your Honor knows, the Debtors and the EFH
18 Committee worked long and hard to construct a notice program
19 to, as best as possible, get notice out to all potential
20 unmanifested asbestos claimants.

21 That order was heavily negotiated. It was
22 consensual. And it led to the issuance of, I think,
23 somewhere around 70,000 direct notices, not to mention all
24 the indirect notice or the constructive notice through
25 publications and newspapers on websites, et cetera. All

1 those forms of notice were designed to get the word out.

2 And what Mr. Hogan says about these class
3 claimants not having notice doesn't make sense to me. They
4 filed their proof of claims. They're in Court today arguing
5 about the bar date. They clearly know about the bar date.

6 Now, did they get that notice directly from the
7 Debtors? I, frankly, don't know. There's no evidence on
8 that, and we don't really need evidence. What we do know is
9 that they have notice. And what that shows, I think, Your
10 Honor, is that the notice program that's been constructed
11 has been effective.

12 It's not a program that is only effective if
13 everyone gets notice from the Debtors. It is a program
14 that's designed to get the word out through whatever
15 channels are available, whether it's through someone's
16 counsel at the union or through someone's spouse or through
17 a friend. All of those are signs, signals of effective
18 notice, and I think that's what's been done here.

19 So this proof of claim, or this class proof of
20 claim request, is -- you know, one of the things it's going
21 to do if granted is it's going to require the Debtors to
22 undertake that whole notice program again. Rule 23 requires
23 notice to potential class members of their potential status
24 as a class member. And I think Mr. Hogan has said, and they
25 said in their brief, that the notice that they would propose

1 that we give to potential class members start at least with
2 the -- at the base line of the same notice that we gave the
3 first time around. S

4 o we're now talking about duplicating what I
5 believe is somewhere around \$2.5 million worth of effort to
6 get the word out. That, to me, seems like a tremendous
7 waste of resources of the debtors.

8 Your Honor, this Court has already shot down two
9 attempts at least to mount a collateral attack
10 inappropriately on the January Order -- or the January
11 Memorandum Opinion and the Order on the bar date and the
12 notice.

13 The first of those was when asbestos plaintiffs'
14 firms came in and asked for the appointment of a class
15 representative for unmanifested claims and future claims.
16 Then Your Honor said the time to -- the time to appeal the
17 bar date Order has passed. The time to appeal the notice of
18 procedures has passed. I'm not going to hear that today.

19 You did the same thing in connection with the
20 confirmation hearing when asbestos plaintiffs came in and
21 said that the Order -- that the reorganization could not be
22 confirmed because of due process concerns to unmanifested
23 claimants.

24 Again, you emphasized the protective nature of the
25 notice program that was entered, the fact that there was no

1 appeal of that, and denied that relief as an inappropriate
2 collateral attack. And so, Your Honor, the Debtors submit
3 that you should deny, as well, this as an inappropriate
4 collateral attack on those two rulings by the Court.

5 Now let's look at the other side of the ledger.
6 We've talked about the -- you know, the bad aspects of this
7 request for proof of claim on behalf of the class. What do
8 we get as a benefit?

9 Well, Mr. Hogan has focused both in his briefing
10 and his argument today on prejudice to class members. Let's
11 start with the class members who are similarly situated to
12 the three who purport to be representatives of the class.
13 There's no prejudice to them if this order is denied. They
14 have filed proofs of claim in advance of the bar date.

15 What I think Mr. Hogan's really getting at is the
16 other class members who are different from the ones who
17 appear in court today, the class members who may not have
18 received notice through any channel. The Court has already
19 addressed the issue of due process and prejudice to
20 unmanifested claimants multiple times in the context of the
21 orders that I just discussed.

22 In lieu of that, the notice program that we have
23 and that we implemented was reasonably calculated to reach
24 as many of the potential claimants as possible. So that's
25 sort of a due process protection on the front end.

1 Then as Mr. Hogan acknowledges, there's a due
2 process protection on the back end as well. And that is if
3 a claimant, notwithstanding our efforts to get the word out,
4 comes into court and says, "I didn't hear this. I didn't
5 know about it. I now have an asbestos claim because I have
6 an injury. I should be relieved from the bar date," then
7 the Court has the ability under the rules to -- you know,
8 for cause shown, to grant relief from that bar date. So
9 there's a due process protection on the back end.

10 And Mr. Hogan sort of acknowledges that, but then
11 tries to shift the discussion from prejudice and due process
12 to this concern about efficiency, which is yeah, we have
13 this protection on the back end, but if you don't grant this
14 motion and allow the class proof of claim, what that means
15 is that you're going to get what they call an avalanche of
16 post bar date proofs of claim and injuries coming into court
17 and that there's going to have to be a case-by-case
18 determination on those claims.

19 Well, that is the construct that Grossman sets up
20 and that we think the Court should apply, but I think this
21 concern about efficiency and the avalanche of claims is
22 really misstated and has no support.

23 We have received, I believe, 10,000 unmanifested
24 claims so far as of today. There's no indication in the
25 record or in the experience of the Debtors that after the

1 bar date there's going to be a sudden flood of manifested
2 claims that are going to come into court and allege that
3 their due process rights were violated because the notice
4 never reached them.

5 What's really going on here, I think, Your Honor,
6 is that Mr. Hogan is trying to flip the burden of showing a
7 due process violation and to take that burden off of the
8 plaintiffs where it would sit with -- under the Grossman
9 standard, and put that on the defendants. In fact -- I'm
10 sorry, the Debtors, and in fact, it would be a preclusive
11 burden because we would not have an opportunity to show that
12 their due process rights weren't violated. They'd be able
13 to come in regardless of whether they receive notice or not
14 and file a claim after the bar date because they would say
15 they were protected by the class proof of claim.

16 So this efficiency concern doesn't hold water.
17 Not only that, but when you think about the tremendous
18 duplication of efforts that would obtain if we had to go
19 through the notice process again. That's the opposite of
20 efficiency. That is a massive inefficiency in the process.

21 So the two aspects or the two arguments that the
22 class claimants make in favor of applying Rule 23 just don't
23 hold up. And the traditional, more traditional reasons to
24 apply Rule 23 in the bankruptcy context also don't hold up.
25 So as the Court observed in American Reserve, you know,

1 efficiency in terms of consolidation of claims in a single
2 forum isn't really an argument in favor of a class treatment
3 in bankruptcy because the claims are already consolidated in
4 a single forum.

5 So what the courts really look to is, is it
6 serving the function of Rule 23 in that it's bringing claims
7 that otherwise would not be filed into court and getting
8 them filed? And I think from experience we know that that's
9 not the case here.

10 The burden of filing claims in this Court, the
11 proofs of claim, is minimal, and we've already seen, as I
12 said -- I believe the numbers are 10,000 and 12,000
13 claimants file unmanifested proofs of claim. So there
14 appears to be no impediments to unmanifested claimants
15 getting into court. And with the notice program being as
16 robust as it is, there's also no impediment to getting the
17 word out.

18 For instance in American Reserve, the Court, when
19 it articulated this rule, said that the bankruptcy court in
20 that case could achieve all of the benefits of class
21 treatment in the bankruptcy context simply by making sure
22 that appropriate notice got out to the claimants. That's
23 exactly what's happened here.

24 So that all goes to the question of whether the
25 Court should apply its discretion and apply Rule 23 in the

1 first place. And we think it's quite clear that the Court
2 should decline to do so. Nevertheless even if the Court
3 were to apply its discretion to apply Rule 23 through 9014
4 and 7023, we don't think that the class claimants have come
5 in with -- that the class claimants have put forward a
6 viable Rule 23 class. And I don't think you need to look to
7 the affidavits to make that determination.

8 I think you can simply look at the class that
9 they're trying to -- the class that they're trying to
10 certify and ask as a matter of first principles whether that
11 satisfies Rule 23. It does not.

12 One thing I would like to highlight is -- and I
13 spent a little more time with their briefs over the last
14 week -- there's a real lack of clarity as to what is the
15 class they want to certify. Does it include folks who
16 received direct notice? Does it include folks who were in
17 the area of constructive notice in a publication? Does it
18 include people like the claimants? Apparently it includes
19 folks who received notice through channels other than direct
20 notice.

21 Is it limited to people who did not receive direct
22 notice or were not targets of constructive notice? Is it
23 limited to people who have not filed a proof of claim? Or
24 does it include the 10,000 folks who have already taken the
25 initiative to do so? Does it include only people who are in

1 trade unions as is suggested in one of the affidavits? Or
2 is it a larger class that includes all unmanifested
3 claimants?

4 If you look at particular paragraphs of their
5 brief, you could interpret them in any of these ways. And I
6 think that shows a lack of clarity around the class that's
7 going to be satisfied, but it also, as you're going through
8 the factors for Rule 23, it's important because it has an
9 impact on the way you analyze those factors.

10 But let's walk through quickly those factors and
11 how they would play out according to different definitions
12 of the class. So if you look at Rule 23(a), the numerosity
13 standard, well, here it really matters how we're defining
14 the class in a sense because if we're defining the class
15 only as those folks who have received zero notice of the bar
16 date and the bankruptcy, then presumably, that's going to be
17 a very small class given the robust nature of the notice
18 program. And we certainly haven't seen any indication that
19 there's a large group of people who have received no notice
20 whatsoever.

21 Regardless, even if it includes the entire class
22 of unmanifested claimants, the entire group, I don't the
23 requirement of numerosity is met here because numerosity
24 doesn't just mean let's count the heads. It means how
25 difficult is it to join those parties into an action?

1 And that concept, the concept of joinder, really
2 has no meaning in this context. There's no joinder of
3 parties that would be necessary absent a class proof of
4 claim here. If there's no class proof of claim, there are
5 individual proofs of claim. That's just the status quo.
6 And as I mentioned, there's no going forward use for this
7 class, so there's no need to join these people into a class
8 for purposes of prosecuting a claim. So I think the
9 numerosity standard, however you look at the class and
10 however it's defined, is not met here.

11 Next, commonality. And so here again, it really
12 reflects the mistaken view that this class is somehow a
13 class of people with a cause of action. When I say it
14 reflects, I mean Mr. Hogan's argument and the brief reflect
15 that because all of their arguments about commonality are
16 about issues including the conduct of the s, the risk of
17 asbestos exposure, etc., those are not issues that are
18 before the Court on a proof of claim.

19 Those are issues that will be before the Court if
20 there is an asbestos litigant who comes to Court and has an
21 injury, but that's not the question that's before the Court
22 today.

23 So as to what's before the Court today, the filing
24 of the proofs of claim and whether a late filing would be
25 appropriate, there's little commonality among the purported

1 class members, especially if you're looking at the entire
2 class of unmanifested claimants. Some received a notice;
3 some didn't. Some filed proofs of claim; some didn't and
4 some are in a situation where they are direct exposures, and
5 some are take home exposures. So there's no one question
6 across the class that really is a question that Your Honor
7 has to answer at this stage of the litigation.

8 Then typicality; do these particular purported
9 class representatives -- are they typical of the entire
10 class? Again, it probably depends on how you define a
11 class.

12 But if you're defining the class to include all
13 unmanifested claimants, the answer is no, these are not
14 typical because they are folks who got notice in a very
15 particular way, and to the extent that they are purporting
16 to be representing people who got no notice, they are not
17 even a member of that class.

18 So these -- this group of potential claimants
19 cannot represent adequately the interests of the folks that
20 they say are really the target of this class protection,
21 which is the group that did not receive any notice.

22 On that predominance question, which is
23 commonality plus, again, because there's no commonality of
24 questions across this class, there can be no for dominance.
25 Extent of litigation already filed is another factor. Here

1 we have 10,000 or more individually filed proofs of claim
2 that cut strongly against having a class because we've seen
3 from experience that folks are filing these claims on their
4 own.

5 Concentration in a particular forum is one of the
6 factors under Rule 23. I think I've already addressed that,
7 that we have a concentration in the bankruptcy court
8 already. We don't need a class mechanism to do that.

9 And then finally, superiority. I think for all of
10 the reasons that I've articulated today and in our brief,
11 the idea that a class proof of claim is superior to the
12 Grossman construct that's already in place, it falls flat.
13 It falls short.

14 And for that reason, the Debtors respectfully
15 submit that the order should be denied. The Court should
16 decline to apply its discretion and apply Rule 23. And even
17 if the Court does apply Rule 23, it should find that those -
18 - the factors under Rule 23 have not been met. Thank you,
19 Your Honor.

20 THE COURT: Thank you, Mr. Rogers. Mr. Shore?

21 MR. SHORE: Good morning, Your Honor. Chris Shore
22 from White & Case on behalf of the investor consortium.
23 I'll be brief.

24 Let me give you two updates first on the deal
25 which is proceeding apace. The Court may have seen that

1 there was some legislation that had been proposed that would
2 bar tax-free spinoffs into REITs. The bill that came out I
3 think last night has a grandfather in for transactions that
4 are subject to a pending PLR. So we kind of dealt with that
5 problem.

6 There's been PUCT testimony filed. It's all kind
7 of what we expected, and that's moving forward to those
8 January dates still. So from our perspective, the
9 transaction is moving as it should be, and by the end of the
10 first quarter, beginning of the second quarter, we
11 anticipate being the owners of EFH. As such, we're keenly
12 interested in addressing the asbestos problem at EFH.

13 To that end, while the deal was going forward and,
14 and during the plan negotiations, we worked very hard with
15 Kirkland to understand the problem and to understand the bar
16 date, why that was put in place, and proceed with that
17 rather than card out everybody is part of a planned
18 settlement.

19 In other words, we let that objection press so
20 that we could keep the deal as structured and would provide
21 a cordoning off of the liability so that we can know what
22 we're investing into.

23 To that end, obviously a great deal of money was
24 spent noticing and performing pursuant to the two prior
25 court orders -- that's money that came out of the new

1 equity's pocket from our perspective -- all to satisfy the
2 due process concerns of unmanifested claimants. So we would
3 reiterate that the Court exercise its discretion not to
4 certify a class which essentially wastes all that money that
5 was spent.

6 I'm only going to add one point, and it's really
7 an emphasis on the legal side of it. You know, there's one
8 key development that isn't really focused on by either side
9 so far since the filing of the papers. The bar date has
10 come and gone.

11 In the eyes of the law right now, the three
12 declarants have claims against the s. Everybody else has no
13 claims against the Debtors that they can prosecute absent
14 relief from the bar date order.

15 The -- so this whole case is far as I'm concerned
16 hinges on the Court's application of Rule 3001(b), which is
17 who's an authorized representative? A class proof of claim
18 was purported to have been filed on behalf of all those
19 parties. There was no authority to file that proof of claim
20 at the time oddly enough. It's the second kink of the day
21 where we have an issue with respect to who's authorized to
22 act on whose behalf and when.

23 So what they're really asking for is retroactive
24 authorization to file a proof of claim on behalf of these
25 parties. Their only mechanism for doing so is Rule 23, and

1 that's why I think you have to look at the class for the
2 purposes of today's motion as parties who did not receive
3 notice and did not file proofs of claim, because that's the
4 only class for which they can have authority to do anything
5 right now.

6 And when you look at the proposed class
7 representatives, they have nothing to do with that class
8 because they did receive notice, actual notice, and they did
9 actually file proofs of claim. So I don't think using the
10 Rule 23 mechanism in this case to give them retroactive
11 authorization to file a proof of claim as appropriate here.
12 And for those reasons, we'd ask you to deny the motion.

13 THE COURT: Thank you, Mr. Shore. Mr. Hogan?

14 MR. HOGAN: Thank you, Your Honor. I'll be brief.
15 Your Honor, Debtors' counsel raised at its essence really
16 what this controversy relates to, and that is, is the action
17 between the class or individuals, who have no cause of
18 action currently because they're unmanifested, versus
19 individuals, those same individuals, who, while not having a
20 cause of action, have a claim pursuant to the construct in
21 Grossman. And so there's a void in that. They don't have a
22 cause of action, but yet they have a claim.

23 The cause of action won't arise until they
24 manifest. And as such, there needs to be protection for
25 those individuals until such time as they manifest. The

1 purpose of the request for the class proof of claim isn't
2 necessarily to prosecute those claims as they manifest, but
3 instead to preserve the status quo until they manifest.
4 Class actions for the purpose of injunctive relief are not
5 unheard of, Your Honor, and that's effectively what this
6 class purports to do.

7 As it relates to the argument that we haven't met
8 our burden with regard to 9014, the burden remains a
9 preponderance of the evidence. Other than argument, Your
10 Honor, there, there is no evidence as to whether or not we
11 satisfied our burden. Our class purports to represent
12 unmanifested asbestos claimants either exposed at work or
13 through take-home exposure.

14 The impact of the Court's prior rulings really has
15 no impact, Your Honor. Our argument isn't inconsistent with
16 what you ruled in the -- with regard to the bar date and
17 your reliance on Grossman. I was involved in the Grossman
18 case unfortunately, Your Honor. I represented the Van
19 Brunts as local counsel. I know all about that case. That
20 case was an -- that case really largely stems on an
21 application of lookback to try and resolve a one-off
22 exposure by a claimant. It wasn't constructed with this
23 application in mind.

24 Your bar date order contains no admonition or
25 prohibition against filing a class proof of claim. It says

1 unmanifested claimants have to file a proof of claim. It
2 doesn't say no class proof of claims shall be filed. We
3 don't see it as an inappropriate collateral attack.

4 Throughout the Debtor's response to my motion
5 they've mischaracterized my involvement, and I just raise it
6 as an issue, Your Honor, just so the Court and the record
7 are clear.

8 Hogan McDaniel doesn't have an "S" at the end of
9 McDaniel. No big deal. Misspelled repeatedly throughout
10 the response. Not a big deal. Bigger, though, Your Honor,
11 is the fact that I'm not a PI law firm. My firm's not a PI
12 law firm. It's represented throughout their response that
13 where a PI law firm. Do I have co-counsel that are PI law
14 firms? Absolutely. But I just wanted the record to be
15 clear on that, Your Honor.

16 Your Honor, the prejudice to the unmanifested
17 claimants is real. If the class proof of claim is not
18 allowed, you'll be left with the one-off Grossman analysis
19 with regard to every individual who comes in and says they
20 didn't get notice. The purpose of the class is to short-
21 circuit that inquiry without short-circuiting the bar date.
22 The bar date exists. We understand that. It's passed.

23 The purpose of this is to coalesce those
24 individuals so that their claims can continue on in light of
25 the bar date, and so that they -- when they manifest, won't

1 be prejudiced by what has already occurred. Their claim
2 will manifest as the Debtors have said. They don't have
3 cause of action, but they have a claimant.

4 That just doesn't make sense, Your Honor. I mean,
5 I know it does within the context of the law, but from the
6 unmanifested claimant's point of view, 10 years from now,
7 when all of a sudden somebody shows up with mesothelioma and
8 they have no idea of the bar date and they try to assert a
9 claim, and the analysis is going to be not on whether
10 they're sick or not but on whether or not they got notice of
11 the bar date. And inherently that just seems unfair, Your
12 Honor.

13 Finally, Your Honor, with regard to the burden of
14 the proof of claim being minimum, there is no impediment,
15 Your Honor. We filed the claims. They're after -- they
16 were filed before the bar date. It's a viable claim. It
17 includes all unmanifested claimants, and that's our
18 position, Your Honor. Thank you.

19 THE COURT: You're welcome. All right, thank you
20 very much. I am going to deny the motion for a number of
21 reasons. First of all, as a preliminary matter, it's a
22 question of the Court's discretion whether to apply Rule
23 7023 to a situation where we're talking about the filing of
24 a proof of claim on behalf of the class.

25 The -- as counsel pointed out and in my experience

1 as well doing independent research, to allow a class proof
2 of claim under the facts and circumstances of this case
3 would be unprecedented. We don't have an existing class
4 action. We often see this where we have an existing WARN
5 Act class, for example, that's been certified by this Court.
6 And though a proof of claim is filed on behalf of that
7 class, it's a completely different situation here. We don't
8 have this pending asbestos manifested or unmanifested injury
9 claim lawsuit pending somewhere, where a class has been
10 certified.

11 We're talking about certifying a class solely for
12 purposes of filing a proof of claim. And I think that is
13 where -- to allow that would be in effect a collateral
14 attack on what this Court has already done, which is set a
15 bar date as required by the bankruptcy rules, requiring
16 filing by unmanifested claimants as contemplated by
17 Grossman's, and establishing and approving an elaborate
18 noticing procedure that cost several million dollars
19 designed to provide a notice as adequately as possible to as
20 many possible claimants as possible. None of those matters
21 have been appealed, and they are final orders.

22 Really Mr. Hogan made at the end an impassioned
23 and interesting and perhaps in some ways weighty argument,
24 which was a collateral attack not on this Court, but on the
25 Third Circuit's opinion on Grossman's, drawing the

1 distinction between a claim and a cause of action. That is
2 the law, and the fact that you have a claim at the time of
3 exposure, but not a cause of action until injury, is a
4 distinction the Third Circuit has made and that I have to
5 apply in the context of what my job is.

6 To apply or to allow the filing of a class proof
7 of claim here and fit that into the bar date mechanism
8 that's under the rules really is to try to fit a square peg
9 into a round hole. It just doesn't make any sense. If I
10 were to certify however I were to draw the lines, which are
11 unclear to me, I agree with the Debtors from the motion
12 exactly how that class would be technically certified.

13 But if I were to allow a class to file this class
14 proof of claim on behalf of unmanifested claimants, the
15 whole point of the bar date goes away because everybody's
16 covered. What's the point of the bar date? And the reality
17 is bar dates are how you operate bankruptcy cases, and
18 they're required by the rules, and they have legal
19 significance, both for reorganizing the estate and for
20 dealing with the claims vs. assets distribution of value.

21 The fact that the claims here are being reinstated
22 as opposed to being distributed, a subset of consideration
23 under a plan, I don't think makes a difference here. The
24 same principle applies. So I will not exercise my
25 discretion to apply Rule 7023 at all to the filing of a

1 class proof of claim here.

2 In addition, were I to do that, I will assume
3 solely for purposes of this ruling that Rule 23 is met here.
4 And that would be without a prejudice on remand if I am
5 remanded and appealed to actually make a factual finding.
6 But we didn't have an evidentiary hearing, and I'll take the
7 affidavits for these purposes on their face value and find
8 that 23(a) is satisfied, but I don't think 23(b)(3) is
9 satisfied in this situation because 23(b) says -- (b)(3)
10 says that the Court finds -- this is the order to satisfy,
11 23(b)(3) -- "The Court finds that the questions of law or
12 fact common to class members predominate over any questions
13 affecting only individual matters, and that a class action
14 is superior to other available methods for fairly and
15 efficiently adjudicating the controversy." I don't believe
16 that in this situation the class action is superior to other
17 available methods.

18 The superior method here is a method that's
19 already occurred, the establishment of a bar date and the
20 establishment of an elaborate notice procedure, which has
21 worked frankly. It's one way or the other in that we have,
22 at least on the face of the affidavits, three persons who
23 did not receive a mailing from the noticing agent that
24 nonetheless got sufficient notice that they -- prior to the
25 bar date that they were put in a situation where they could

1 file a proof of claim.

2 So I find that (b)(3) would not be satisfied in
3 this situation. So for those reasons, I will also talk
4 about due process. I spoke at length at confirmation in
5 overruling the objection to confirmation reiterating my
6 findings as to the issues of due process. And I would
7 incorporate those, rather than going through this whole
8 process again, into today's ruling. And just to be clear
9 again, perspective due process is preserved, or, excuse me,
10 is met. Perspective due process is met by the bar date
11 notice being provided.

12 The issue of whether that due process as applied
13 is sufficient to individual claimants is fully preserved.
14 And that's what Grossman's is about. So if there are
15 unmanifested claimants, who don't file a proof of claim, who
16 manifest an injury in the future, and who attempt to file
17 some sort of claim and prosecute a cause of action against
18 the reorganized, their ability to argue under Grossman's
19 that the due process I previously approved was insufficient
20 and that their claim should survive, their cause of action
21 should survive, that's fully preserved, and that we'll be
22 decided on a fact-by-fact and a case-by-case basis in the
23 future by whatever judge has to decide those issues.

24 I think that that is sufficient and superior to
25 requiring or allowing the issuance of a class cause of -- or

1 class proof of claim in this instance. So I will again deny
2 the motion on the merits. And do you have a form of order?

3 MR. ROGERS: We do, Your Honor. I -- as you want
4 to point out one provision in the order that I didn't
5 mention in my argument, and that is we have in Paragraph 3
6 that the class proofs of claim that have already been filed,
7 and we have three proofs of claim that have been filed that
8 purport to be on behalf of the class, we would have those
9 expunged from the claims register to the extent that they
10 purport to be filed on behalf of anyone other than the named
11 claimant.

12 THE COURT: All right.

13 MR. ROGERS: So we'd put that in the order.

14 THE COURT: Thank you.

15 MR. ROGERS: May I approach, Your Honor?

16 THE COURT: Yes. Thank you. I'm going to
17 interlineate under Paragraph 1, where it says, "The motion
18 is denied as set forth herein," I'm going to add, "and for
19 the reasons set forth on the record at the hearing."

20 All right. With that change, I've signed the
21 order. We'll take a -- Mr. Husnick, how are we on our
22 witness?

23 MR. HUSNICK: We're good, Your Honor.

24 THE COURT: Okay.

25 MR. HUSNICK: The witness will be available to

1 testify.

2 THE COURT: All right. Thank you. We'll
3 reconvene. We'll take a recess and reconvene at 1:00 and
4 take up the Stewart matter.

5 (Recess)

6 CLERK: All rise.

7 THE COURT: Please be seated. All right. We're
8 going to continue with the Stewart matter. And we have Mr.
9 Seitz available on the telephone now.

10 And I don't know if there -- is there any
11 additional thing you want to say before we turn it over to
12 Mr. -- well I'm going to ask Mr. Seitz some questions and
13 then turn it over to Mr. Stewart.

14 MS. YENAMANDRA: Sure. Your Honor, again, Aparna
15 Yenamandra from K&E on behalf of the Debtors.

16 We just wanted to say on our behalf Mr. Kotarba is
17 here. We're happy to do a short direct of him as well. It
18 will mirror what was in his declarations and his proffered
19 testimony, but defer to Your Honor on whether that would be
20 helpful, given that the scope of the cross should be limited
21 to what was provided on direct.

22 THE COURT: Okay. Mr. Seitz, if you -- if you're
23 available to answer just a couple questions and then what
24 we'll do is we'll offer up the witness for cross
25 examination, if anyone wishes to cross examine him. If you

1 want to make an additional direct, that's fine.

2 THE COURT: Though if you could help the Court
3 with just a recitation of the -- you know, what happened,
4 what was done, you know, what the chronology is from your
5 involvement in April to -- I believe it was April 2015 till
6 your -- till today. And I understand there was some
7 discovery that may have occurred, so I'm just trying to
8 clarify, for the record, for my own understanding and for
9 Mr. Stewart's understanding, exactly sort of what happened
10 and what you did in your role as counsel.

11 MR. SEITZ: Certainly, Your Honor. First of all,
12 when we were retained, the proofs of claim had already been
13 filed and were of record. They're voluminous documents so
14 the first thing we did after our retention was to review all
15 those records and try to address some of the issues that
16 with had, with our client, about the connections between the
17 records and the various parties in the case.

18 After considerable back and forth with the client
19 on those points, we made the recommendation that discovery
20 be propounded of the Debtors to try to elicit any
21 information or documentation they may have, because the --
22 in the circumstances of the Debtors, there was a lack of
23 access to various documents that the Debtors may have had in
24 their possession.

25 So we did, in consultation with the client,

1 propound those. The Debtors provided responses to that
2 discovery. We -- I consulted with the clients about that
3 discovery and the effect of those responses and made
4 recommendations to the client as a result of a combination
5 of the review of all the discovery in the case and the
6 various claims that had been filed and the amendments to
7 claims that had been filed and the records that the client
8 had provided.

9 As of December 4th, we made certain
10 recommendations to the client that I really can't go into
11 because of the attorney/client relationship, but the client
12 was not happy with our recommendations and we allowed
13 additional time for the Debtor to provide -- the client to
14 provide additional information to us. That was not
15 satisfactory, so on December 8th we provided a written
16 notice to the client that, you know, we were no longer a --
17 we had an impasse in our views as to how the case and
18 prosecution of these claims should be handled and we were
19 disengaging as counsel.

20 And we encouraged the client to get replacement
21 counsel on our behalf. And we reminded the client that
22 there was an evidentiary hearing scheduled, by the Debtors,
23 for December 16th, and that they should have an attorney for
24 that conference -- or for that hearing.

25 The client provided us with additional information

1 that didn't change our mind as to the representation of
2 them. We communicated that to them, again, reminded them
3 that the hearing was going forward and that they should have
4 counsel and that they should have their counsel contact us
5 so that we could do a substitution. When that was not
6 forthcoming, we filed a notice of withdrawal of our entry of
7 appearance in the case.

8 THE COURT: All right. There was some amended
9 claims filed or another claim filed, I think in -- later,
10 after the representation occurred. You were not involved in
11 that. Is that correct?

12 MR. SEITZ: That's correct.

13 THE COURT: Okay. Let's do this. Why don't you
14 put on your witness for your supplemental direct, and then
15 I'll make him available for cross examination.

16 Mr. Seitz, if you could stay on, I'd appreciate
17 it.

18 MR. SEITZ: I will, Your Honor.

19 THE COURT: Please take the stand and remain
20 standing.

21 CLERK: Please raise your right hand. Do you
22 affirm you're willing to tell the truth, the whole truth,
23 and nothing but the truth, to the best of your knowledge and
24 ability?

25 MR. KOTARBA: I do.

1 CLERK: Please state and spell your name for the
2 record.

3 MR. KOTARBA: Sure. Steve Kotarba. K-O-T-A-R-B-
4 A.

5 CLERK: Thank you.

6 THE COURT: Thank you, Mr. Kotarba.

7 MR. KOTARBA: Thank you.

8 THE COURT: Sorry about the delay.

9 MR. KOTARBA: Not a problem.

10 MR. GANTER: Your Honor, Jonathan Ganter of
11 Kirkland & Ellis on behalf of the Debtors. We prepared a
12 binder of just materials from the docket. Permission to
13 approach and provide it to you?

14 THE COURT: Yes. Thank you. Did you give Mr.
15 Stewart a copy?

16 MR. GANTER: Mr. Stewart, you have a copy from
17 beforehand?

18 MR. STEWART: Yes. Yes. Yes, sir.

19 THE COURT: Okay.

20 DIRECT EXAMINATION

21 BY MR. GANTER:

22 Q Mr. Kotarba, could you please introduce yourself for
23 the Court.

24 A Sure. Steve Kotarba. I'm a managing director with
25 Alvarez & Marsal.

1 Q And what exactly does Alvarez & Marsal do?

2 A Sure. We provide financial advisory services, we're
3 serving that role with respect to the Debtors in these
4 cases.

5 Q So, can you elaborate a little bit more on A&M. Is it
6 okay if we refer to Alvarez & Marsal as A&M --

7 A Sure.

8 Q -- you understand that? You -- or expound a little bit
9 on what A&M's role is with regard to this matter in
10 particular?

11 A Sure. With respect to the incident matter, we're
12 serving to lead the process to reconcile the various claims
13 that have been filed in these cases. So for example, as the
14 claims come in, we're leading the process to -- to -- to
15 undertake to look at those claims, review them and take
16 positions as to their validity.

17 Q And you're a senior member of the claims evaluation
18 team, correct?

19 A That's correct.

20 Q Are you familiar with the proofs of claim filed by Ms.
21 Stewart that are the subject of today's hearing?

22 A I am.

23 Q And just to be clear, those proofs of claim are numbers
24 5739, Number 10003 and Number 10982?

25 A That's correct.

1 Q Mr. Kotarba, your declaration in support of the 14th --
2 the Debtors' Fourteenth Omnibus Objection is already --

3 MR. GANTER: -- was moved into evidence this
4 morning, I believe, Your Honor?

5 THE COURT: Yes.

6 MR. GANTER: Is that accurate?

7 THE COURT: Yes.

8 MR. GANTER: We didn't apply a number to it, but
9 it will be -- that will be Defendant -- Debtors' Exhibit 1
10 in your binder.

11 THE COURT: Okay.

12 Q Could you please turn to Tab 1 in your binder, sir.

13 A I'm there.

14 Q What was the purpose of A&M and the claims evaluations
15 team of reviewing the proofs of claim as described in your
16 Debtors' Exhibit 1?

17 A Sure. We undertake a process to review all of the
18 claims that are filed in the case, as I said earlier, to
19 review them for their validity. With respect to the
20 Fourteenth Omnibus Objection, as we go through the series of
21 claims, they'll fall into certain categories. One of the
22 categories that's pertinent here are claims where we think
23 there's no basis, based on the company's books and records,
24 or what we call a no-liability claim. So one of the bases
25 for the objection, Omnibus 14, was to object to claims for

1 which we thought the estates had no liability.

2 Q And with regard to Omnibus 14, you reviewed -- the
3 claims investigation team reviewed two of Ms. Stewart's
4 claims. Is that right?

5 A That's correct.

6 Q I'd ask you to please turn to Tab 5 in your binder.

7 A Okay. I'm there.

8 Q Do you recognize what Debtors' Exhibit 5 is?

9 A I do.

10 Q And what is it?

11 A It's Proof of Claim Number 5739.

12 Q And this -- was this one of the proofs of claim -- Ms.
13 Stewart's proofs of claim that was reviewed related to
14 Omnibus Objection -- the Fourteenth Omnibus Objections?

15 A It is.

16 Q And then if you could turn to the next tab, which is
17 Debtors' Exhibit 6. Let me know when you're there.

18 A I'm there.

19 Q Could -- do you recognize this?

20 A I do.

21 Q And what is this, sir?

22 A This is Claim 10003.

23 Q This is one of Ms. Stewart's proofs of claim that was
24 investigated in relation to your Fourteenth Omnibus
25 Objections?

1 A It is.

2 Q Okay. At a high level, Mr. Kotarba, could you please
3 describe the inquiry that was performed with regard to
4 Debtors' Exhibits 5 and 6, the Proofs of Claim 5739 and
5 10003?

6 A Sure. So as the claims come in, we receive, "we" being
7 the A&M claims team, receives those claims. We'll do our
8 own investigation and review of those claims in an attempt
9 to ascertain the validity of those claims, their ties to the
10 company's books and records, the statements and schedules
11 that have been filed in these cases. Where we're unable to
12 take a position as to here or need further support to
13 reconcile that claim, we'll reach out to the company, which
14 we did in these cases.

15 So we'll conduct a review, then we'll reach out to
16 the company, give them sort of the results, preliminary
17 thoughts on our review and then elicit their additional
18 support and research to further attempt to reconcile the
19 claim.

20 Q So before we get to the results of that review,
21 Debtors' Exhibits 5 and 6, can you tell us, as parts of that
22 inquiry, did that involve review of the proofs of claim
23 themselves?

24 A It did.

25 Q And did it also involve review of the materials

1 appended to the proofs of claim, so attached to them?

2 A It did.

3 Q Mr. Kotarba, what did the inquiry regarding Debtors'
4 Exhibits 5 and 6 reveal?

5 A We were unable to make any sort of connection between
6 the claims asserted and -- either claim, and the Debtors or
7 their estates. Essentially we determined that the estates
8 had no liability for these claims, because we couldn't
9 determine any sort of connection or nexus between the claims
10 and the Debtors.

11 Q On that point, you said that the claims had no
12 liability.

13 A That's correct.

14 Q Could -- direct you, sir, to Paragraph 5 of Debtors'
15 Exhibit 1, which is, again, your declaration in support of
16 the Debtors' Fourteenth Omnibus Objections. Let me know
17 when you're there.

18 A All right. I'm there.

19 Q Okay. If you see at the beginning of Paragraph 5 your
20 declaration states that, "Upon review of the proofs of claim
21 filed against the Debtors in these Chapter 11 cases, the
22 Debtors have identified 61 no-liability claims listed on
23 Exhibit 2 to Exhibit A." Do you see that?

24 A I do.

25 Q Sir, now if you could turn to Tab 3 in your binder.

1 And as you're turning there, I'll represent that this is
2 Exhibit A to the Debtors' Fourteenth Omnibus Objections,
3 which is on the docket at 405-2. Okay?

4 A I'm there.

5 Q And then when you're there, if you could turn to -- so
6 do you recognize this, sir?

7 A I do.

8 Q Could you please turn to Page 27 of 33, using the
9 numbers at the top?

10 A I'm there.

11 Q Or actually, I'm sorry, before we go to 27 of 33, can
12 you please turn to 18 of 33.

13 A Okay. I'm there.

14 Q And explain what this shows.

15 A Sure. This is just the cover page of Exhibit 2 to
16 Exhibit A. So in -- in the context of how we file our
17 objections, we file an Omnibus objection, which would have
18 the narrative that describes the basis for the objection,
19 generally and then we attach exhibits that would list the
20 specific claims that are subject to each type of objection.

21 Q And is this the same Exhibit 2 to Exhibit A that was --
22 we just looked at in Paragraph 5 of your declaration at the
23 Debtors' Exhibit 1?

24 A That's correct.

25 Q All right. Now, if you could go to 27 of 33.

1 A Um hmm.

2 Q And I'll direct you to Entries 56 and 57.

3 A I see those.

4 Q Okay. Explain what these show.

5 A What these do is they simply list out, for the benefit
6 of the claimant and others reviewing the objection, the
7 claimant's name, the case number where the claim was
8 originally filed, and then other particulars with respect to
9 the claim and then there's a column, the last column, which
10 states our reason for disallowance. And we give the reason
11 why we're disallowing the claim, which ties back to the
12 narrative in the Omnibus objection.

13 Q And just to be clear, for the record, Entries 56 and 57
14 are they Ms. Stewart's claims, which we looked at as
15 Debtors' Exhibits 5 and 6?

16 A They are. Yes.

17 Q And so the determination was those were no-liability
18 claims?

19 A That's correct.

20 Q Sir, now you also -- we also -- in evidence already, if
21 you could turn to Debtors' Exhibit 2. And what you'll see
22 here is that this is the -- your declaration, in support of
23 the Debtors' Thirty-Third Omnibus Objections. Do you see
24 that?

25 A I do.

1 Q Can you please compare the work -- A&M's work and the
2 claims investigations team's work related to the subject
3 matter covered in this declaration with that in Debtors'
4 Exhibit 1?

5 A Sure. I mean the review -- the process from the review
6 of the claims, to the vetting of the claims, to placing them
7 on the Omnibus objection and how the objection worked with
8 corresponding exhibits would have been identical in Omnibus
9 33 as it was for Omnibus 14.

10 Q And Debtors' Exhibit 2, your second declaration here,
11 also uses the phrase "no-liability proofs of claim." Does
12 that have the same meaning as in Exhibit 1?

13 A It does.

14 Q And Mr. Kotarba, you reviewed one -- or the claims
15 investigation team, A&M and the claims evaluation team
16 reviewed one of Ms. Stewart's proofs of claim in connection
17 with the Thirty-Third Omnibus Objections.

18 A That's correct.

19 Q If you could turn to Tab 7 in your binder, sir. It's a
20 heavy lift there.

21 A It is. Okay. I'm there.

22 Q All right. Do you recognize this?

23 A Yeah, I do.

24 Q And what is it?

25 A It's Plan Number 5739.

1 Q Actually if -- I'd direct you back up to the top, above
2 that, the stamped number under the barcode.

3 A Oh, I apologize. Yeah, Claim Number 10982. It's the
4 third claim that was filed.

5 Q And so this is Ms. Stewart's claim, Debtors' Exhibit 7,
6 that was reviewed in connection with Debtors' Thirty-Third
7 Omnibus Objections, right?

8 A That's right.

9 Q And at a high level, can you describe the inquiry that
10 was performed with regard to Debtor's Exhibit 7?

11 A Sure. It would have been the same as we did with
12 respect to the other claims, in that we would take the
13 claim, review the claim, attempt to identify anything in the
14 claim that would tie to existing records that we have, to
15 assess the validity of the claim. We would then go back and
16 work with the company to elicit their further assistance to
17 evaluate the claim. Upon those efforts, once we realized
18 that there was no liability, we would then place it on the
19 appropriate objection.

20 Q All right. And that review of this particular claim,
21 would that have involved review of the proof of claim
22 itself?

23 A That's correct.

24 Q As well as any materials that had been attached to it?
25 I don't know if there --

1 A That -- I don't think there was for this one. But
2 that's correct.

3 Q Okay.

4 A (Indiscernible).

5 THE COURT: That is small print.

6 Q Okay. What did the inquiry regarding Debtors' Exhibit
7 7 reveal?

8 A Similar to the other claims, we were unable to
9 ascertain any liability on behalf of the Debtors for this
10 claim.

11 Q I'd ask you now to turn to Debtor -- to Tab 4. And
12 just let me know when you're there. Actually, I apologize.
13 Before we get to Tab 4, go back to Debtors' Exhibit 2, we go
14 to Paragraph 5.

15 A Okay. I'm at Exhibit 2.

16 Q Okay. In Exhibit 2, Paragraph 5, do you see, similar
17 to your first declaration, it starts -- it indicates that,
18 in the second line, "The Debtors have identified 81 no-
19 liability claims listed on Exhibit 2 to Exhibit A." Do you
20 see that?

21 A Yes.

22 Q Okay. Now if you'll turn to Tab 4. And I'll represent
23 that this is -- on the docket at 6499-2 and it's Exhibit A
24 to the Debtor's Thirty-Third Omnibus Objection. Are you
25 there, sir?

1 A Yes.

2 Q If you could turn to Page 11 of 27, along the top.

3 A Okay. I'm there.

4 Q All right. And then -- and could you explain what this
5 shows?

6 A Sure. This is Exhibit 2 to the same Exhibit A, just
7 identified, to the Thirty-Third Omnibus Objection.

8 Q Okay. That was referenced in Paragraph 5 of your
9 Thirty-Third Omnibus Objection?

10 A That's correct.

11 Q Now if you can go to Page 25 of 27.

12 A I'm there.

13 Q Okay. And then turn -- look -- direct your attention
14 to Entry 69. Can you explain what this shows?

15 A Sure. Similar to the other claims, this indicates that
16 there is a no -- pending no-liability objection on the
17 Thirty-Third Omnibus Objection to the Stewart Claim 10982
18 and similar to the other claims we give the reason for
19 disallowance as no-liability.

20 Q Mr. Kotarba, thank you. Besides -- stepping back,
21 besides what you've already discussed with regard to the
22 Debtors' 14th and Thirty-Third Omnibus Objections and Ms.
23 Stewart's claims, are you aware of any other investigation
24 related to Ms. Stewart's proofs of claim that are reflected
25 at Debtors' Exhibits 5, 6 and 7?

1 A There was one further investigation. Ms. Stewart's
2 counsel had reached out to us and propounded discovery to
3 which we prepared responses.

4 Q Could you please turn to Tab 8 now, sir.

5 A I'm there.

6 Q And do you recognize this?

7 A I do.

8 Q What is it?

9 A These are the discover -- the list of discovery
10 requests that we received from Ms. Stewart's counsel.

11 Q And this -- so these were the subject of that
12 additional investigation that you mentioned?

13 A That's correct.

14 Q How many requests are there, total, in here? Do you
15 know?

16 A I'm checking. I believe -- I believe there was 15.

17 Q Okay. I want to direct you, just briefly, to a couple
18 of them in particular. First, if you please look to Request
19 for Production Number 3, which appears on Page 4 of the
20 document.

21 A Okay. I'm there.

22 Q At a high level, can you please explain what this
23 particular request is about and is asking for?

24 A Sure. Really Requests 3 and 4 sort of work together.
25 And Request 3, the discovery essentially asking for us to

1 investigate and opine on any connections between certain
2 individuals and the Debtors. And then Question 4 lays out
3 and asked a very similar question but attempts to find ties
4 between certain parcels of land and any of the Debtors.

5 Q Thank you. Mr. Kotarba, you're a -- as you mentioned
6 earlier, you're a senior member of the Debtors' claims
7 evaluation team, right?

8 A That's correct.

9 Q And can you tell us whether any members of the claims
10 evaluation team conducted any investigation in connection
11 with Debtors' Exhibit 8?

12 A Yeah, there was extensive additional research into
13 compiling responses to this discovery.

14 Q Okay. What can you tell us, in more detail, about that
15 search that was done?

16 A Sure. We -- we were able to go back, in conjunction
17 with the company and their resources, essentially went back
18 and looked at any company systems where this information may
19 be recorded, any -- had conversation with any individuals
20 that may have knowledge of either these persons or these
21 parcels. And then additional research was done into third
22 party external sites, again, to try and -- to determine any
23 sort of connection between either these persons or these
24 parcels.

25 Q And when you mention third party external sites, that

1 includes public records?

2 A That's correct.

3 Q How about -- what -- are you -- have anything more you
4 can tell us about the software systems that were examined?

5 A Sure. There -- there was -- I know there was -- it was
6 an accounting software system maintained by the Land
7 Department and then there were also certain databases that
8 -- that related to current and former customers of the
9 Debtors, and Ms. Stewart had appeared as a former customer,
10 so we checked those databases as well.

11 Q Mr. Kotarba, what, if anything, can you tell us about
12 the results of the investigation you just described, in
13 response to Debtors' Exhibit 8?

14 A After those results, again, we were unable to find any
15 connection between any of the parties identified, or parcels
16 identified and the Debtors.

17 Q Does that include -- was -- did you find any connection
18 between the Debtors and the -- any of the property or
19 parcels of land described?

20 A We did not.

21 Q How about -- did the searches reveal anything with
22 regard to Debtors' operations that were -- purportedly
23 touched the property?

24 A We -- we didn't find any identify -- any instances of
25 that.

1 Q And so did the investigation, in response to Debtors'
2 Exhibit 8, return any requests that were responsive to the
3 documents in any way?

4 A They did not.

5 MR. GANTER: Your Honor, at this time the Debtors
6 have no further questions for Mr. Kotarba right now but
7 would ask to move the following exhibits used during the
8 direct examine into evidence, those being DX-1, DX-2 --
9 well, which are already in evidence, my apologies. So it
10 would be -- right now we would move in Debtors' Exhibit 3,
11 Debtors' Exhibit 4, Debtors' Exhibit 5, Debtor's Exhibit 6,
12 Debtor's Exhibit 7 and Debtors' Exhibit 8.

13 THE COURT: Any objection to the admission of
14 these documents into evidence?

15 MR. STEWART: I would object to --

16 MR. SEITZ: Your Honor, just -- Your Honor, just
17 as a point of clarification, Gary Seitz here. Is Debtors'
18 Exhibit 8 the request and the responses?

19 THE COURT: I believe it is just the request.

20 MR. GANTER: That's correct, Your Honor, it's just
21 the request. That were used --

22 MR. SEITZ: I think it would be fair -- it would
23 be fair if it was both the request and the responses.

24 MR. GANTER: That's not a problem for us, Mr.
25 Seitz. We can add those as an additional exhibit.

1 THE COURT: All right. We'll add those as Exhibit
2 9 then. You can have time to put that together, obviously.

3 MR. GANTER: Okay.

4 THE COURT: Mr. Stewart, you were going to say
5 something?

6 MR. STEWART: DX -- I believe it's going to be DX-
7 7, you want -- they want to say this is a claim for Mrs.
8 Stewart. That's incorrect. On the backside of it it says
9 Kenneth Stewart, Pro Se. That was my claim. Or
10 (indiscernible) --

11 THE COURT: All right. Well, the exhibit sort of
12 speaks for itself. It says what it says. And I'll take it
13 based on what it says and we can discuss what it means
14 later. But as a matter of evidence, it says what it says.

15 MR. STEWART: So what kind of search engine did
16 you use to --

17 THE COURT: All right. Wait. Hang on, we're not
18 there yet.

19 MR. STEWART: Okay.

20 THE COURT: All right. So I'm going to admit
21 Documents 1 through 8 into evidence, pending 9 which will be
22 the responses.

23 MR. GANTER: Um hmm.

24 THE COURT: So admitting 8 and subject to
25 admitting 9.

1 And at this point, unless you have any further
2 questions, I'll turn the witness over for cross?

3 MR. GANTER: No further questions. But we also
4 wanted to add, with regard to some of the filings on the
5 docket, that for purposes of completing the record, with
6 respect to the Stewarts' proof of claim, that we also
7 request that the Court just take notice of four other
8 filings that were on the docket related to this, just for
9 completeness of the record.

10 THE COURT: All right.

11 MR. GANTER: And those would be, they're docketed
12 at Number 5384, Number 5716, Number 6101 and Number 6934.

13 THE COURT: And what are they?

14 MR. GANTER: They are -- Number 5384 is a letter
15 -- and these are -- I believe I have the exact description
16 from the docket, it's a letter and statement of facts and
17 that includes one exhibit. And this was I believe docketed
18 by Mr. Stewart.

19 THE COURT: Okay.

20 MR. GANTER: 5716 is a statement of facts
21 amendment to the statement, with additional information,
22 dated 8/25/15, again, Mr. Stewart.

23 There is a -- Entry 6101 is a letter regarding
24 time to hire an attorney to file an adversary dated 9/18/15,
25 Mr. Stewart, and then 6934 is an additional letter filed by

1 Mr. Stewart along with the exhibits. That's just for
2 completeness of the record, Your Honor.

3 THE COURT: Okay. Thank you.

4 MR. STEWART: May -- can I say something?

5 THE COURT: Yes, why don't you take the podium, if
6 you don't mind.

7 MR. GANTER: I'll just get out of your way.

8 MR. STEWART: On 8/18/2015 you appointed Mr.
9 Sassower to discuss with me the questions that I was asking
10 for. He did not give me any of the information that I asked
11 for. I had my family lawyer counsel ask for the same
12 information and nothing was given to him. And it was
13 appointed -- it was appointed that day that he was supposed
14 to disclose information to me, and it wasn't disclosed at
15 all.

16 THE COURT: Okay. Do you have questions for this
17 witness? Let's take this one step at a time.

18 MR. STEWART: In my -- in my -- in my paperwork
19 I'm -- I'm ready, but I just got this book at 12:00 o'clock,
20 and it's going to take me a second to pull up the easements.

21 THE COURT: Okay.

22 MR. STEWART: The easements have already been
23 entered in as a record.

24 THE COURT: They're part of what has been entered
25 into admission?

1 MR. STEWART: Yes, and thus my question is, if
2 they've already been entered in as a record, he should have
3 been able to find those easements and tracked it back.

4 THE COURT: All right, well you can examine him on
5 that.

6 MR. STEWART: And as a record, I went to the PUC,
7 and for some reason, they have the arm of KSU, the attorney
8 general has that information, and I put a Freedom of Request
9 in for that information, because I have the nuclear energy
10 policy for the nuclear power plant in the state of Texas.

11 THE COURT: All right, do you have any questions
12 for the witness?

13 MR. STEWART: Yes. It's going to be --

14 THE COURT: Which exhibit number?

15 MR. STEWART: It's going to be Exhibit DX-6, Page
16 2 of 15. But it's really not labelled. It's going to be
17 where -- the pages are not numbered.

18 THE COURT: Did you say you had these documents
19 sort of separate already?

20 MR. STEWART: Yes.

21 THE COURT: We can work off that, if that's
22 easier.

23 MR. STEWART: Oh, well it's going to be -- okay.

24 THE COURT: If not, that's fine. We'll figure it
25 out.

1 MR. STEWART: It's going to say Gifco Properties,
2 it's going to be --

3 THE COURT: About how far in are we?

4 MR. STEWART: Three quarters of the way in.

5 THE COURT: Okay. Can you approach it, give your
6 copy to the witness? Would that be acceptable? Maybe I can
7 -- actually, can you let me see it real quick, and I'll see
8 if I can find it in my own binder.

9 MR. STEWART: It's going to be 3 of 15, it's going
10 to be on the bottom side.

11 THE COURT: Got it. I'm there. Thank you,
12 counsel.

13 MR. STEWART: It's going to be the Texas Electric
14 Service Company.

15 MR. KOTARBA: What page are you looking at?

16 MR. STEWART: 3 of 15.

17 MR. KOTARBA: Okay.

18 MR. STEWART: It's going to be the Texas Electric
19 Service, TU, Texas Utilities, probably.

20 THE COURT: All right, which one?

21 MR. KOTARBA: It's going to be 3 of 15, it's going
22 to be your 6572, it's going to be the Gifco property.

23 THE COURT: Okay, what's the question?

24 Q I'm asking, does he recall researching the Texas
25 Utility Service Company?

1 A I don't have independent recollection of researching
2 this particular line, but we did research the claim, and all
3 the supreme documentation, and were unable to determine a
4 tie between the Debtors and your claims.

5 Q It's going to be TXU Electric.

6 A I'm not sure that that is --

7 Q So these are all easements that are on our property.

8 A Okay.

9 Q From Trinity River, to Montague County.

10 A Where's the reference to Trinity River?

11 Q (Indiscernible), if you researched it, you would admit
12 it's right by the Trinity River, right here.

13 A Okay.

14 Q So I --

15 A I don't know what you're asking.

16 Q Did you personally research this information yourself?

17 A I did not personally research it, no.

18 Q On the next page, it's going to be Gifco Properties,
19 with the resolution. It's going to be resolution trust.

20 THE COURT: Which page? 415?

21 MR. STEWART: That's going to be 415. It's about
22 three quarters of the way down the page. You can see
23 resolution, it's going to be resolution trust. Do you see
24 that?

25 MR. KOTARBA: I don't.

1 MR. STEWART: It's going to be on Page 415.

2 MR. KOTARBA: Okay.

3 THE COURT: Dated February 16th, 1973, is that
4 correct?

5 MR. STEWART: Yes.

6 THE COURT: I don't see trust, but it does say
7 resolution.

8 MR. STEWART: It's resolution trust, because it's
9 how we acquired the prop -- or we had to save it.

10 THE COURT: DO you see it, sir?

11 MR. KOTARBA: I don't. I wonder if I have the
12 same page.

13 THE COURT: Page 415.

14 MR. KOTARBA: Yep.

15 THE COURT: About two-thirds down, you'll see the
16 dates on the left. It's dated February 16th, 1973, the
17 grantee is Gifco Prop, and then it says Doc Type Legacy
18 Number, the word Resolution.

19 MR. KOTARBA: Oh, got it, got it, I do.

20 THE COURT: All right, and the question then.

21 Q Do you recall going over this particular document,
22 because it's going to be all of the set track?

23 THE COURT: Do you recall going over this
24 document?

25 A I don't. Others reviewed it, and they reported back to

1 me. I didn't review this individually.

2 Q So have you ever went over this information? So you
3 physically went over the information that I submitted to
4 Court?

5 A We went through your documentation, and then others at
6 my direction went through that review. I don't recall
7 individually doing this page, no.

8 Q I actually submit, when I realized that people weren't
9 looking at the -- it's a lot of information to take in -- I
10 actually submitted just bits and pieces, to make it easier
11 on you, so you'd know what to actually look at, and you'd
12 see it. Did you ever get those papers that I faxed in, to
13 THUMG, it was about five, four pages of this specific
14 document?

15 A I'm not sure which fax you're referring to. I mean, I
16 will say that we received the information that you submitted
17 extensively, and I was unable to find a connection.

18 Q Do you see a connection now, of easements, of the
19 legible easements?

20 A I would have to take time to review this independently.
21 I can't make a determination from the stand.

22 Q Okay. I thought that was part of the discovery.

23 THE COURT: Part of what was the discovery?

24 MR. STEWART: Mr. Seitz --

25 THE COURT: I don't understand what you're asking.

1 MR. STEWART: Didn't Mr. Seitz ask for this in
2 discovery?

3 THE COURT: Mr. Seitz found in discovery -- who
4 did the work at A&M in response to the discovery?

5 MR. KOTARBA: We actually work with persons at the
6 Debtors.

7 THE COURT: Individuals at the Debtors themselves?

8 MR. KOTARBA: That's correct.

9 THE COURT: Where, in Irving, or?

10 MR. KOTARBA: Out at headquarters, at company
11 headquarters.

12 THE COURT: At headquarters.

13 MR. STEWART: On Page 5 of 15, do you see Texas
14 Power and Light?

15 THE COURT: Where?

16 MR. STEWART: It's going to be 5 of 15, it's on
17 the next page, it's Texas Power and Light Company, it's
18 another easement.

19 THE COURT: You mean at the very top there?

20 MR. STEWART: Yes, sir.

21 A That's correct. It's Texas P&L Co.

22 Q Texas Power and Light Company.

23 A Well, I can't be certain that that's the same.

24 Q Okay. Well, if you researched, it, you would know what
25 it stands for, wouldn't you think?

1 A I can't tell you from the stand what Texas A&L Co
2 stands for.

3 MR. STEWART: I don't think there's been discovery
4 done.

5 THE COURT: What do you mean?

6 MR. STEWART: I don't think that anybody's
7 actually went over and physically looked at my documents
8 that I've submitted.

9 THE COURT: Why would you say that?

10 MR. STEWART: Because they don't even know if --

11 THE COURT: The man just testified that he did.
12 That he didn't personally do it, but people under his
13 direction did, in consultation with the Debtor.

14 MR. STEWART: Page 7 of 15. The Debtor can't
15 object to the information, based on discovery.

16 THE COURT: No one's objecting to the information,
17 I don't know what you're saying.

18 MR. MONTEMAYOR: The Debtor has objected to it
19 based on information that was submitted earlier, to these
20 matters, that there is no connection at all with reference
21 to what was demanded from them in the discovery, Your Honor.
22 And they said there's no connection, and there is connection
23 based on these matters here. I mean, with --

24 THE COURT: Help me out. What am I looking at?
25 I'm looking at a spreadsheet, what is this?

1 MR. STEWART: This is going to be the property --

2 THE COURT: Property search?

3 MR. STEWART: No, it's going to be Gifco

4 Properties.

5 THE COURT: But what is the document?

6 MR. STEWART: It is transactions and easements for

7 Dallas County.

8 THE COURT: All right, so this is a public

9 document that you --

10 MR. STEWART: It's a public, because I did my
11 research on our property. In 1968, my father gave to the
12 Dallas County/Irving land, let them subdivide. He retained
13 all rights to the easements, and it was going to be his
14 company that did work on the easements, and I submitted that
15 document into Court today, and I am the beneficiary to that
16 680046, Page 14.

17 THE COURT: Is -- a couple questions for counsel
18 to the extent you know, is Texas P&L Company, is that a
19 Debtor, a predecessor to a Debtor?

20 MR. GANTZ: Your Honor, we'd have to go back and
21 check. I'm not even clear, from Mr. Stewart, whether this
22 is actually something he prepared, or a public filing. It's
23 just a question.

24 MR. STEWART: It's my research that I did on, Your
25 Honor.

1 THE COURT: It's a print out a computer search,
2 right? You put in the word --

3 MR. STEWART: No, I went to the County Records,
4 and the 680046, Page 14, that I submitted into the docket
5 today, if you do research, they have it blacked out. I had
6 to go to microfiche, and get it off the computer and I had
7 it certified.

8 THE COURT: Well, I didn't look at anything that
9 you filed today. I don't know what you're talking about.

10 MR. STEWART: Okay. But some of the documents
11 that are needed, that you have to get, you'll have to go to
12 the County for it, and search off microfiche. A lot of
13 documents that relate to the easements --

14 THE COURT: So your claim is, what are these --
15 this is one large tract of land?

16 MR. STEWART: There's going to be seven tracks of
17 land throughout the State of Texas from Montague County to
18 East Texas.

19 THE COURT: Okay, and you -- who owns that land?

20 MR. STEWART: And in Montgomery. My father and my
21 mother own that land. Now my mother owns the Montague and
22 East Texas.

23 THE COURT: She owns the land.

24 MR. STEWART: She owns what wasn't given away,
25 yes. But he retained the rights to the easements, and --

1 THE COURT: What do you mean he retained the
2 rights to the easements? The right to get paid for the
3 easements?

4 MR. STEWART: No, but he says, "I'm going to give
5 you the land. I'm going to let you subdivide --" To
6 dedicate to the public use, the benefit (indiscernible)
7 streets. I mean, like I said, I had to pull it off
8 microfiche, it's -- "the streets, the alleys, thereon, for
9 all public use in purposes including, but not limited to,
10 all the streets and the rights of the City of Irving, and
11 assigns to the alleys and install and operate and replace
12 his drainage storm sewers, lines, gas lines, telephone
13 poles, and electrical poles. Says the easements shown on
14 the pact here above grant, dedicate, and reserve for mutual
15 --

16 THE COURT: Is this from what you filed this
17 morning?

18 MR. STEWART: Yes, but we here do bind ourselves
19 to the easements, the electrical lines, anything that's on
20 the easements is going to be done by Stewart Company, and
21 it's been documented in 1968, because that's when we're
22 giving the land.

23 THE COURT: All right. So I'm just trying to
24 figure out your argument. So your father --

25 MR. STEWART: Yes, Kenneth James Stewart.

1 THE COURT: Granted, or gave, or sold a bunch of
2 land to the City of Irving, Texas.

3 MR. STEWART: Dallas County.

4 THE COURT: Dallas County, all right.

5 MR. STEWART: It goes all the way up to
6 Montgomery.

7 THE COURT: And the consideration was that he
8 would do all the construction work.

9 MR. STEWART: Yes, so it would be his companies
10 that do the sewer, the power --

11 THE COURT: And did that happen? Did his
12 companies actually do that work?

13 MR. STEWART: In my investigation, it sure does
14 like TXU, and Oncor, and Edison International, we have
15 claims, a large amount of claims to it.

16 THE COURT: Well, and the claim is that they
17 double-crossed you, I guess?

18 MR. STEWART: Yes, with my -- not this, my family
19 lawyer, Charlie B. Mitchell, which he's going to be with
20 some wind energy, with -- my father was one of the providers
21 on that specific document. Charlie B. Mitchell, I think was
22 with Moody Electric. I believe they're in debt. And
23 Douglas J. Brooks, with associates. And I am the associate.

24 THE COURT: Okay, all right. Do you have any
25 other questions for the witness?

1 MR. STEWART: No. No, not right now.

2 THE COURT: Okay, redirect.

3 MR. GANTZ: Hold on one moment, Your Honor.

4 THE COURT: Mr. Stewart?

5 MR. STEWART: Yes?

6 THE COURT: What's your middle -- who are you?

7 Are you Kenneth R. Stewart, are you Kenneth S. Stewart?

8 MR. STEWART: In 1994, my father put it in a red
9 folder, did not throw away, and it was my TRW from 1994, and
10 he just went back to Edison in 1995 as the ethical counsel,
11 and he was the counsel for the registrant and that -- TRW
12 states that I am Kenneth S. Stewart, AKA Robert, and TRW,
13 just for your information, is owned by Allstate.

14 Allstate, in 2007 went into an agreement with the
15 attorney general, with KKR, and I think that's where my
16 shares have been lost, or what have you. I went to the Bank
17 of the Mellons, it was 8/25/2015, after I left court.

18 I went to Syracuse, and talked to Bank of the
19 Mellons, I gave them the exact information, my TRW, gave
20 them my driver's license. I had an Oklahoma ID at the time,
21 and they said, "Well, we need something else to prove about
22 this address," which is my mother's address. So I went and
23 got my registration out of my truck. And they said, "We're
24 going to run the check, and we'll get back," and I submitted
25 that document as one of the proofs. They came back and

1 said, "Kenneth S. Stewart, that --"

2 THE COURT: That's what I'm confused about. I'm
3 trying to figure out what your name is. What's your name?
4 Your name, yeah.

5 MR. STEWART: I go by Kenneth Robert Stewart. My
6 father put it as Kenneth S., I'm not sure why. I think it
7 has something to do with England. I'm not sure, it's a code
8 of some sort.

9 THE COURT: All right. But the social security
10 numbers, I did look at that from Bank of NY Mellon. They
11 said the social security numbers didn't match, is that
12 right?

13 MR. STEWART: My social security?

14 THE COURT: I thought that's what I read.

15 MR. STEWART: I know, it said the -- I turned in
16 the Edison bond for Kenneth S. Stewart. They said it came
17 back -- I am Kenneth S. Stewart, but it came back that the
18 bond didn't match what was on the paper. Instead it went to
19 C, and then to the DTCC, and the DTCC gave it to KKR.

20 THE COURT: All right.

21 MR. STEWART: So that's where the mistake has
22 been.

23 THE COURT: Okay. Any question?

24 MR. GANTZ: No further questions, Your Honor.

25 THE COURT: All right. Thank you, sir, you may

1 step down. You may be excused, if you wish.

2 MR. KOTARBA: Thank you, Your Honor.

3 THE COURT: To go have your deposition taken. Mr.
4 Stewart, do you have anything else you want to put in front
5 of the Court?

6 MR. STEWART: My personal opinion, I don't think
7 they have actually done the research telling them that the
8 easements that I've submitted, or as evidence to support my
9 proof of claim.

10 THE COURT: All right. Can you flesh that out a
11 little bit, and respond to that -- this argument is, I
12 think, that the plaintiff's prima facie valid, it's your
13 burden to rebut that presumption of validity through
14 evidence.

15 Obviously you've submitted testimony today, as
16 well as representations to the Court, documents, et cetera,
17 and the argument back is, "Look, there's documents here that
18 purport to show easements in favor of Gifco," if I got it
19 right, "Property Company against what might be Debtors, or
20 predecessors to the Debtors, which might give rise to a
21 proof of claim, and how you -- what's your response to how
22 you've rebutted that presumption of validity?" If that
23 makes any sense.

24 MS. YENAMANDRA: Your Honor, once again, Aparna
25 Yenamandra, from K&E, on behalf of the Debtors. Just to

1 level-set, a little bit, we did, as I noted, search for
2 books and records before and after filing the objections.
3 We went through the thousands of pages of appended
4 materials, had many of the same conversations that Your
5 Honor had today, in an attempt to figure some of this out.
6 What might be some helpful context is that TXU and Oncor
7 were originally a consolidated entity.

8 Post deregulation, the entity split, and the
9 transmission lines, which seem to be at the heart of a
10 number of the proofs of claim, went with the Oncor entity.
11 That might help provide, shed some light on the confusion
12 here as to the Debtor's relationship to the allegations, and
13 the proofs of claim.

14 The other thing we wanted to clarify while we were
15 up here is with respect to the directive that Your Honor
16 gave in response to the email Mr. Stewart sent to Mr.
17 Sassower, from Kirkland, we understood the directive to be
18 that Mr. Sassower, or his designee, should meet with Mr.
19 Stewart. Mr. Husnick, who is also here, did in fact meet
20 with Mr. Stewart, just outside, the halls.

21 We continued to correspond. At that time, they
22 asked for informal discovery on all of the Debtor's
23 corporate records, going back ad infinitum. We then
24 understood that they retained counsel, so we started to
25 conduct our conversations through Mr. Seitz, who then served

1 the formal discovery, which we responded to, and which Your
2 Honor has been made familiar with today.

3 In addition, Your Honor, Oncor's counsel has
4 informed us that we can represent today that they did their
5 own diligence as well, searched their books and records, and
6 found no relationship to the land parcels, the mining
7 operations, the transmission line allegations, the pipeline
8 allegations in their books and records, so we believe that
9 the fact that they did their search, we did our search
10 appropriately addresses the potential confusion associated
11 with TXU and Oncor originally being a consolidated entity.

12 THE COURT: All right, thank you. Mr. Stewart?

13 MR. STEWART: Who is TXU, who is Oncor?

14 THE COURT: TXU is --

15 MR. STEWART: Who's registered owner, who's --

16 THE COURT: Well, Oncor's owned by two entities.
17 Well, three entities. 80 percent owned by EFIH, which is a
18 Debtor, 20 percent is a minority holder, company called
19 Texas Transmission. Oncor's not a Debtor of this Court.
20 TXU is the business that is in the retail business of buying
21 -- of providing -- what's the word I'm looking for? It's a
22 retail servicer, or a retail provider of electrical services
23 to customers in Texas, there we go.

24 MR. STEWART: And Oncor takes care of the
25 transmission?

1 THE COURT: Yes, and they're a non-Debtor.

2 MR. STEWART: But they're fixing to sell the
3 asset.

4 THE COURT: The plan that the Court confirmed
5 sells this control of Oncor -- well, reorganizes the control
6 of Oncor through the EFH entities, and there are new owners,
7 if you will, that are putting new money into the company
8 that will actually own that business, but it's being
9 reorganized.

10 MR. STEWART: Yes, but I have nuclear energy
11 insurance on a nuclear power plant in the State of Texas,
12 and I want this to be --

13 THE COURT: That would be, probably Luminant owns
14 that. Luminant is one of the Debtors.

15 MR. STEWART: PUC told me that that's TXU.

16 THE COURT: Well, it used to be called TXU. It's
17 an alphabet soup. The whole company, all together, used to
18 be called TXU, and it was divided up into a bunch of
19 different business units and entities, and everybody changed
20 their names.

21 MR. STEWART: But really, they're owned by the
22 same entity. I mean, basically it's like take it out of
23 this pocket, put it in the other pocket. Yeah.

24 But I have a policy on that, and Allstate knows
25 why I have that policy on that, and they know what the

1 attorney general, state of Texas, and KKR, when they worked
2 a deal out in 2007 to sell off my asset or dilute my stake.

3 THE COURT: All right. Well I have to say, I'm
4 going to rule. I'm going to grant the objection. I'm going
5 to disallow all the claims. The claims are prima facie valid
6 under the law. It's the burden of the Debtors to rebut that
7 presumption. They've done that through the submission of
8 evidence today that indicates that there is no connection
9 between the Debtors and any of the allegations you have
10 made.

11 I find that evidence to be credible and complete.
12 It would then shift to you to try to convince me otherwise,
13 and I've looked at your documents, I've read what you've
14 submitted to the Court, both previously, and in preparation
15 for today. So I took my binders home last night, and read
16 everything to prepared for today --

17 MR. STEWART: What about what I -- oh, go ahead.

18 THE COURT: Well, you're going to submit papers to
19 the Court at 9:00 before a 9:30 hearing, they're not going
20 to be read.

21 MR. STEWART: I asked Mr. Seitz to submit them
22 last week, and he resigned.

23 THE COURT: That's a question between you and Mr.
24 Seitz. And Mr. Seitz, as your agent, didn't do what he was
25 supposed to do, then you may or may not have claims against

1 him. I'm not saying you do, but the Court can't be held
2 responsible for any miscommunication between a client and
3 counsel. So I'm going to sustain the claim objection, and
4 disallow your claims. Can I have a court order?

5 MS. YENAMANDRA: Yes, Your Honor. May I approach?

6 THE COURT: Yes. Anything further for today?

7 MS. YENAMANDRA: Nothing from the Debtors, Your
8 Honor, thank you.

9 THE COURT: Thank you, we're adjourned.

10 MR. STEWART: Sir, I have to say one thing.

11 THE COURT: Yes.

12 MR. STEWART: I typed in my last four digits of my
13 social security number in your search, 5438. TXU Energy
14 came up.

15 THE COURT: Okay. I don't -- all right. Thank
16 you for that statement. We're adjourned.

17

18 * * * * *

19

20

21

22

23

24

25

I N D E X

RULINGS

DESCRIPTION	PAGE	LINE
Motion for Application of Federal Rule of Bankruptcy Procedure 7023 and to Certify a Class Pursuant to Federal Rule of Civil Procedure 23.	82	19
HEARING re Debtors' Fourteenth Omnibus (Substantive) Objection to Certain No Liability Claims.	128	4
HEARING re Debtors' Thirty-Third Omnibus (Substantive) Objection to Substantive Duplicate and No Liability Claims	128	4

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya
Ledanski
Hyde

Digitally signed by Sonya
Ledanski Hyde
DN: cn=Sonya Ledanski Hyde,
o=Veritext, ou,
email=digital@veritext.com,
c=US
Date: 2015.12.17 15:43:41 -0500

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: December 17, 2015

UNITED STATES BANKRUPTCY COURT
District of Delaware
824 Market Street, 3rd Floor
Wilmington, DE 19801

In Re:

Energy Future Holdings Corp.
Energy Plaza
1601 Bryan Street
Dallas, TX 75201
EIN: 46-2488810
TXU Corp.
TXU Corp
Texas Utilities

Chapter: 11

Case No.: 14-10979-CSS

NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION


A transcript of the proceeding held on 12/16/2015 was filed on 12/18/2015 . The following deadlines apply:

The parties have 7 days to file with the court a *Notice of Intent to Request Redaction* of this transcript. The deadline for filing a *request for redaction* is 1/8/2016 .

If a request for redaction is filed, the redacted transcript is due 1/19/2016 .

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is 3/17/2016 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber (see docket for Transcriber's information) or you may view the document at the clerk's office public terminal.



David D. Bird, Clerk of Court

Date: 12/18/15

(ntc)

Notice Recipients

District/Off: 0311-1

User: Brandon

Date Created: 12/18/2015

Case: 14-10979-CSS

Form ID: ntcBK

Total: 60

Recipients of Notice of Electronic Filing:

ust	United States Trustee	USTPREGION03.WL.ECF@USDOJ.GOV
aty	Andrea Beth Schwartz	andrea.b.schwartz@usdoj.gov
aty	Brian Schartz	bschartz@kirkland.com
aty	Chad J. Husnick	chusnick@kirkland.com
aty	Daniel J. DeFranceschi	defranceschi@rlf.com
aty	David M. Klauder	dklauder@bk-legal.com
aty	Edward O. Sassower	esassower@kirkland.com
aty	Jason M. Madron	madron@rlf.com
aty	Jason M. Madron	madron@rlf.com
aty	Jason M. Madron	madron@rlf.com
aty	Jason M. Madron	madron@rlf.com
aty	Joseph Charles Barsalona II	barsalona@rlf.com
aty	Mark D. Collins	collins@rlf.com
aty	Michael A. Rosenthal	mrosenthal@gibsondunn.com
aty	Peter Jonathon Young	pyoung@proskauer.com
aty	Richard L. Schepacarter	richard.schepacarter@usdoj.gov
aty	Thomas F. Driscoll, III	tdriscoll@bifferato.com
aty	Tyler D. Semmelman	semmelman@rlf.com
aty	Tyler D. Semmelman	semmelman@rlf.com
aty	Tyler D. Semmelman	semmelman@rlf.com
aty	William A. Romanowicz	rbgroup@rlf.com

TOTAL: 21

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Energy Future Holdings Corp.	Energy Plaza	1601 Bryan Street	Dallas, TX 75201
aty	Andrew McGaan	Kirkland & Ellis LLP	300 North LaSalle	Chicago, IL 60654
aty	Anna Terteryan	Kirkland & Ellis LLP	555 California Street	San Francisco, CA 94104
aty	Anthony V. Sexton	Kirkland & Ellis LLP	300 North LaSalle	Chicago, IL 60654
aty	Aparna Yenamandra	Kirkland & Ellis LLP	601 Lexington Avenue	New York, NY 10022
aty	Brenton Rogers	Kirkland & Ellis LLP	300 North LaSalle	Chicago, IL 60654
aty	Bridget K. O'Connor	Kirkland & Ellis LLP	655 Fifteenth Street, N.W.	Washington, DC 20005
aty	Bryan M. Stephany	Kirkland & Ellis LLP	655 Fifteenth Street, N.W.	Washington, DC 20005
aty	Christopher W. Keegan	Kirkland & Ellis LLP	555 California Street	San Francisco, CA 94104
aty	Cormac T. Connor	Kirkland & Ellis LLP	655 Fifteenth Street, N.W.	Washington, DC 20005
aty	Emily E. Geier	Kirkland & Ellis LLP	300 N. LaSalle	Chicago, IL 60654
aty	Iskender H. Catto	McDermott Will & Emery LLP	340 Madison Avenue	New York, NY 10173
aty	James H.M. Sprayregen	Kirkland & Ellis LLP	601 Lexington Avenue	New York, NY 10022
aty	Jeff J. Marwil	Proskauer Rose LLP	Three First National Plaza	70 W. Madison Street Suite 3800 Chicago, IL 60602
aty	Jeremy L. Graves	GIBSON DUNN & CRUTCHER LLP	1801 California Street	Suite 4200 Denver, CO 80202-2642
aty	Jeremy L. Retherford	Balch & Bingham LLP	1901 Sixth Avenue North	Suite 1500 Birmingham, AL 35203-4602
aty	Jonathan F. Ganter	Kirkland & Ellis LLP	655 Fifteenth Street, N.W.	Washington, DC 20005
aty	Justin Sowa	Kirkland & Ellis LLP	555 California Street	San Francisco, CA 94104
aty	Kevin Chang	Kirkland & Ellis LLP	555 California Street	San Francisco, CA 94104
aty	Lary Alan Rappaport	Proskauer Rose LLP	2049 Century Park East	Los Angeles, CA 90067-3206
aty	Marc Kieselstein	Kirkland & Ellis LLP	300 North LaSalle	Chicago, IL 60654
aty	Mark E. McKane, Esq.	Kirkland & Ellis LLP	555 California Street	San Francisco, CA 94104
aty	Mark K. Thomas	Proskauer Rose LLP	Three First National Plaza	70 W. Madison Street Suite 3800 Chicago, IL 60602
aty	Matthew E. Papez	Kirkland & Ellis LLP	655 Fifteenth Street, N.W.	Washington, DC 20005
aty	Michael A. Firestein	Proskauer Rose LLP	2049 Century Park East	Los Angeles, CA 90067-3206
aty	Michael A. Petrino	Kirkland & Ellis LLP	655 Fifteenth Street, N.W.	Washington, DC 20005
aty	Michael B. Slade	Kirkland & Ellis LLP	300 North LaSalle	Chicago, IL 60654
aty	Michael L. Raiff	Gibson Dunn & Crutcher LLP	2100 McKinney Avenue	Dallas, TX 75201
aty	Michael P. Esser	Kirkland & Ellis LLP	555 California Street	San Francisco, CA 94104
aty	Natalie Hoyer Keller	Kirkland & Ellis LLP	300 North LaSalle	Chicago, IL 60654
aty	P. Stephen Gidiere, III	Balch & Bingham LLP	1901 Sixth Avenue North	Suite 1500 Birmingham, AL 35203-4642
aty	Richard M. Cieri	Kirkland & Ellis LLP	601 Lexington Avenue	New York, NY 10022-4611
aty	Richard U.S. Howell	Kirkland & Ellis LLP	300 North LaSalle	Chicago, IL 60654
aty	Stephen E. Hessler	Kirkland & Ellis LLP	601 Lexington Avenue	New York, NY 10022
aty	Steven N. Serajeddini	Kirkland & Ellis LLP	300 North LaSalle	Chicago, IL 60654
aty	Todd F. Maynes	Kirkland & Ellis LLP	300 North LaSalle	Chicago, IL 60654
aty	W. Clark Watson	Balch & Bingham LLP	1901 Sixth Avenue North	Suite 1500 Birmingham, AL 35203-4642

aty
aty

William Guerrieri
William T. Pruitt

Kirkland & Ellis LLP
Kirkland & Ellis LLP

300 North LaSalle
300 North LaSalle

Chicago, IL 60654
Chicago, IL 60654

TOTAL: 39